

NOVATO GENERAL PLAN REVISION

(COMMENTS AND RESPONSES TO COMMENTS)

The Final Environmental Impact Report (EIR) for the Novato General Plan Revision consists of:

1. The Draft EIR - November 1995.
2. Comments received on the Draft EIR.
3. A list of commentors.
4. Responses to the comments.
5. A summary listing of revisions or other changes to the Draft EIR.

The Draft EIR (No. 1) was published in November 1995, and widely distributed. Copies are available at the Marin County Library (Novato or Civic Center Branch), and through the City Planning Division, 901 Sherman Avenue, Novato, 94945 — 415/897-4341.

Nos. 2 through 5 are organized in this document.

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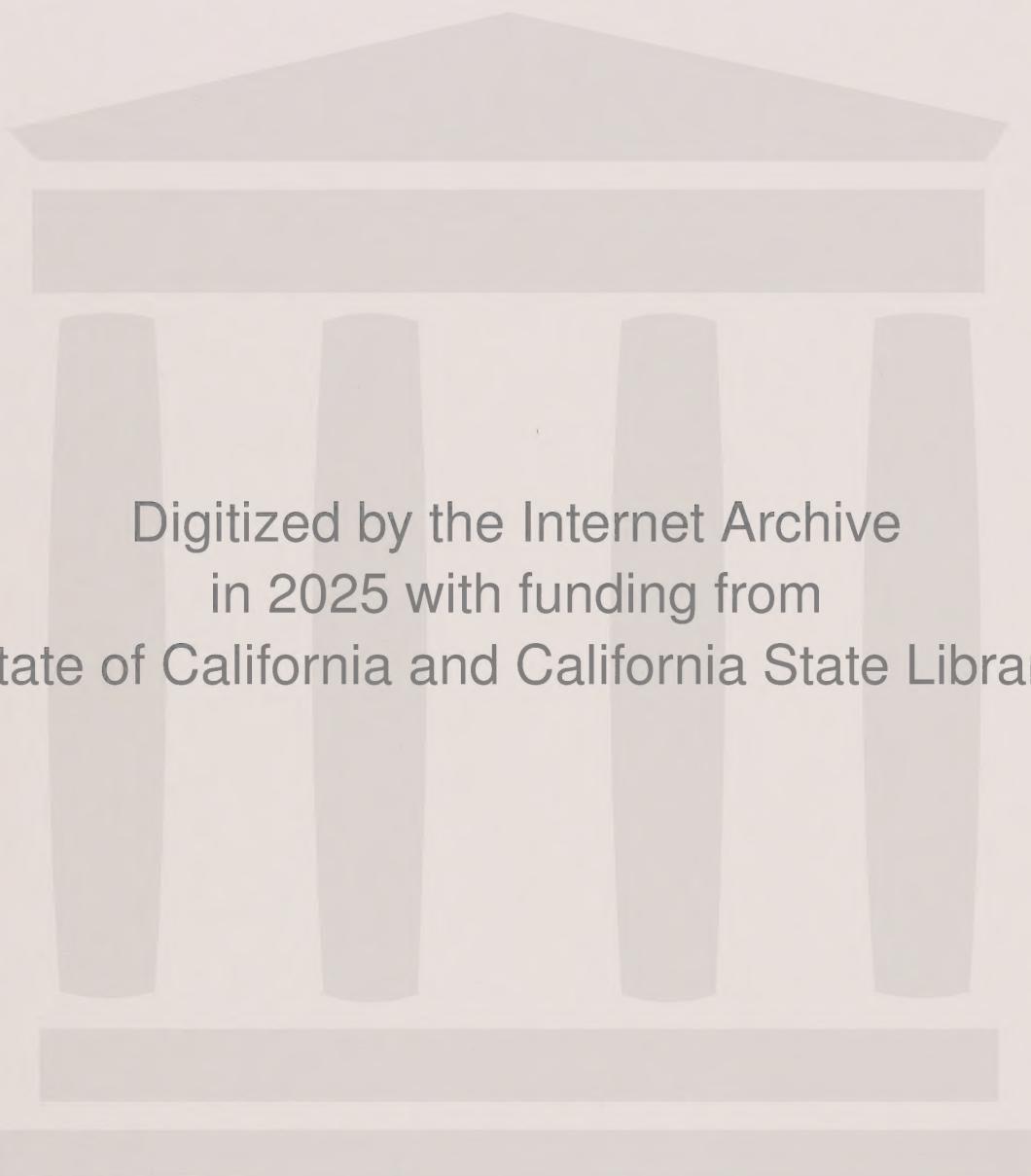
JUN 20 1996

UNIVERSITY OF CALIFORNIA



Leonard Charles
& Associates

FINAL
ENVIRONMENTAL IMPACT REPORT



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INTRODUCTION

PROJECT DESCRIPTION

The City of Novato has prepared a Draft General Plan intended to replace the existing General Plan which was originally adopted in 1981. This Draft General Plan contains goals, objectives, policies, and programs aimed at guiding future development within the City of Novato.

EIR PROCESS AND FORMAT

A Draft EIR was prepared for a Draft General Plan and submitted for public and agency review in July, 1995. Subsequent to the end of the public review period, the City decided to revise the Draft General Plan. A Revised Draft EIR was prepared and circulated on November 17, 1995; the 45-day review period ended January 3, 1996. The following report includes all written comments submitted on the Revised Draft EIR prepared for the Revised Draft General Plan and our responses to those comments. This report also contains the summarized comments submitted verbally at five Public Hearings held before the Novato Planning Commission.

It should be pointed out that the Revised Draft EIR includes all the comments that were submitted on the original Draft EIR as well as our responses to those comments. These comments and the responses are included in Appendix C of the Revised Draft EIR. These earlier comments plus the responses are thus part of the Revised Draft EIR.

These comments on the Revised Draft EIR and our responses, when added to the November, 1995 Revised Draft EIR, (herein incorporated by reference) constitute the Final EIR for the proposed plan. This Final EIR will be reviewed by the City (the Lead Agency) and certified as being legally adequate (per the California Environmental Quality Act - CEQA) prior to the City Council taking any action on the plan itself.

WRITTEN COMMENTS ON THE DRAFT EIR

The following section of this report contains letters received during the public review period for the Revised Draft EIR; the comment period began on November 17, 1995 and ended on January 3, 1996. This section begins with a list of the commentors and where their letter or comment can be found as well as the EIR preparers' response to the comments. Each letter is followed by a response page. Each comment requiring response is numbered to correspond to the numbered responses.

Following the letters and responses, there is a section that presents the verbal comments made at the five Public Hearings on the Revised Draft EIR plus responses to those comments.

Following the comments and responses is a summary of the more important changes that should be made to the Revised Draft EIR based on the comments received.

List of Commentors on the Revised Draft EIR

<u>Commentor</u>	<u>Comment Date</u>	<u>Page</u>	<u>Response Page</u>
<u>Public Agency Comments</u>			
Marin County Congestion Management Agency	12/4/95	4	6
ABAG, S.F. Bay Trail	12/5/95	8	9
Marin Municipal Water District	12/12/95	10	12
Marin County Community Development Agency	12/27/95	13	17
Bay Area Air Quality Management District	12/29/95	20	23
Novato Sanitary District	1/2/96	24	27
<u>Other Written Comment Letters</u>			
Lawrence Baskin	12/4/95	28	30
C. Jeff Brinton	12/18/95	31	40
Paul Jensen	12/18/95	41	44
Jack Felson	12/19/95	45	49
Jim and Lynn Emrich	12/20/95	50	56
Judy V. Davidoff	12/27/95	57	64
Carol Whitmire	12/28/95	66	70
Carol and Jesse Bedi	12/28/95	71	72
Vincent D. Mulroy	1/3/96	73	77
Judith A. McClarin	1/4/96	78	79
<u>Verbal Comments Presented During Planning Commission Public Hearings</u>			
		80	96

clearinghouse

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MARIN COUNTY CONGESTION MANAGEMENT AGENCY

Belvedere:
Steger Johnson

December 4, 1995

Corte Madera:
Norman Richardson

County of Marin
Gary Giacomini

Fairfax:
Doug Wilson

Larkspur:
Larry Lanctot

Mill Valley:
Betsey Cutler

Novato:
Bernard H. Meyers

Ross:
Mary Brown

San Anselmo:
Peter Breen

San Rafael:
Al Boro

Sausalito:
Amy Belser

Tiburon:
Mark Ginalski

Ms. Vi Grinsteiner
City of Novato - Community Development Director
900 Sherman Ave.
Novato, CA 94945

- Re: 1. Revised Environmental Impact Report - Novato General Plan Revision
2. Revised Novato General Plan

Dear Ms. Grinsteiner:

We have reviewed the following sections:

- Section 4.5: Transportation and Circulation of reference #1.
- Chapter I: Land Use and Chapter II: Transportation of the reference #2.

Thank you for incorporating most of our earlier comments and providing adequate responses. Unfortunately we are not able to find any discussions about the following points:

- The revised EIR, Table 18, page 151, the Second Plan Alternative still does not address the steps necessary to improve the projected deficiency and how to meet the required LOS D of Novato Boulevard, from 7th Street to Diablo Avenue. The Preferred Plan recommends to improving this section by widening the existing lanes. For us to understand the full benefit of this improvement, please provide us the analysis which shows the estimated projected peak hour volumes and level of service calculations for this segment. #A1
- In addition to the proposed Bel Marin Keys Boulevard/Highway 37 connector, the Draft should include the improvements to Bel Marin #A2

Ms. Vi Grinsteiner
December 4, 1995
Page 2

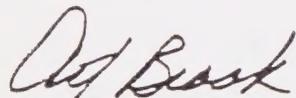
Keys Boulevard, Nave Drive and Ignacio Boulevard to mitigate the impact of the new developments at Hamilton Air Force Base and Bel Marin Keys. ↑ #A2

- The new Bel Marin Keys development should be included in the plan and the traffic impact analyzed. | #A3

Please provide us with these information before we are able to recommend to the Agency that the revised General Plan complies with the requirement of Congestion Management Program.

If you have further questions, please let us know.

Sincerely yours,



Art Brook
Deputy Executive Director

txdo

cc: CMA Directors
Supervisor Moore
Rod Wood, City Manager
Farhad Mansourian, Executive Director
Carol Williams- County Community Development Agency

Response to Letter from Art Brook, Marin County Congestion Management Agency

The traffic subconsultants, Whitlock & Weinberger Transportation, Inc., have provided the following responses.

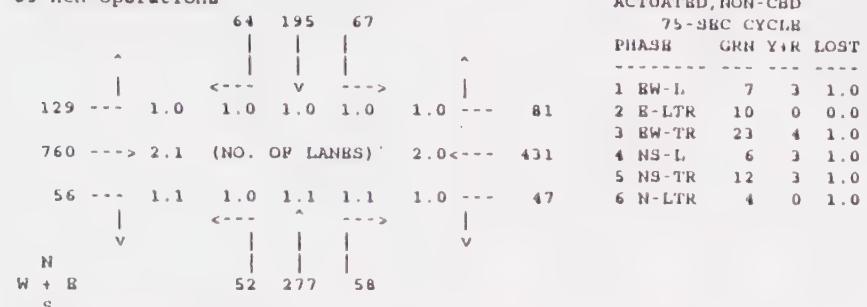
- A1. The mitigated level of service calculations for the study intersections are included on the following page.
- A2. The traffic analysis included impacts and mitigations for the intersections of U.S. 101 South Ramps/Ignacio Boulevard/Enfrente Road and U.S. 101 North Ramps/Bel Marin Keys Boulevard/Nave Drive. The mitigations that are described in the referenced traffic report (on file with the City Community Development Department) are reproduced below.
 - a. Add a right-turn lane on Ignacio Boulevard at the U.S. 101 South Ramps/Ignacio Boulevard/Enfrente Road intersection. This will improve the projected Level of service from LOS F to LOS C.
 - b. At the U.S. 101 North Ramps/Bel Marin Keys Boulevard/Nave Drive intersection, change the eastbound Bel Marin Keys Boulevard approach to include a through lane, a shared through/right-turn lane, and a right-turn lane. This will improve the projected Level of Service from LOS F to LOS D.
- A3. Development of Bel Marin Keys was included in the analysis of Highway 101 and Highway 37. Please refer to the referenced *General Plan Revision Transportation Background Report #3: Evaluation of the Preferred Plan and Alternatives* (Whitlock & Weinberger Transportation, Inc, June 1995; on file with the Novato Community Development Department).

LOS Software by TJKM Transportation Consultants

Condition: Preferred Plan (Mitigated) - AM Peak Hour 06/02/95

INTERSECTION 7 7TH/TAMALPAIS/NOVATO BLVD. CITY OF NOVATO
Count Date Time Peak Hour

85 HCM Operations



RTOR CNPL PBD W/ MIN PRK % BUS HVY ARR PEAK HOUR SAT
APP VPH PBDS PHASE GRN ING GRA STP VBH TYP FACTOR FLOW

12345678										LT TH RT LBPT THRU RGHT					
NB	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750	
SB	25	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750
BB	0	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750
WB	10	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750

LANE ADJ PHASE LANB L APRCH
LANE WIDTH ADJ SAT ORDRBR GROUP O DBLAY
GROUP (PT.) VOL VOL FLOW V/S 12345678 G/C CAPAC V/C DBLAY S & LOS

NB L	12.0	52	52	1646	0.032	4	6	0.147	241	0.215	21.5 C	24.7
T	12.0	277				56					C	
R	12.0	58				56						
TR	12.0	335	335	1688	0.198	56	0.240	405	0.827*	25.2 D		

SB L	12.0	67	67	1646	0.041	4		0.107	176	0.382*	24.4 C	20.2
T	12.0	195	195	1733	0.113	5		0.187	323	0.603	20.0 C	C
R	12.0	64	39	1473	0.026	5		0.187	275	0.142	16.5 C	

BB L	12.0	129	129	1646	0.078	12		0.253	417	0.309	17.4 C	9.7
T	12.0	760				23					B	
R	12.0	56				23						
TR	12.0	816	857	3429	0.250	23		0.493	1692	0.506*	8.5 B	

WB L	12.0	47	47	1646	0.029	1		0.120	198	0.238*	22.8 C	12.7
T	12.0	431	453	3465	0.131	3		0.347	1201	0.377	12.0 B	B
R	12.0	81	71	1473	0.048	3		0.347	511	0.139	10.9 B	

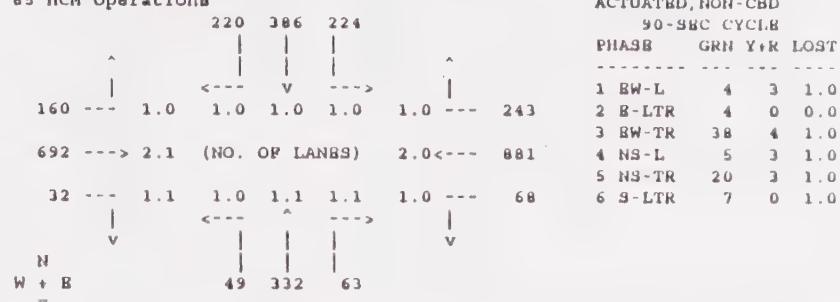
*CRITICAL LANE GROUP DBLAY= 14.6 SBC/VBH V/C =0.54 LOS=B
INT=PGPMITPM. INT, VOL=BXP. AMV+PGP. AMV+C. AMV+D. AMV, CAP=... LOSCAP.TAB

LOS Software by TJKM Transportation Consultants

Condition: Preferred Plan (Mitigated) - PM Peak Hour 06/02/95

INTERSECTION 7 7TH/TAMALPAIS/NOVATO BLVD. CITY OF NOVATO
Count Date Time Peak Hour

85 HCM Operations



RTOR CNPL PBD W/ MIN PRK % BUS HVY ARR PEAK HOUR SAT
APP VPH PBDS PHASE GRN ING GRA STP VBH TYP FACTOR FLOW

12345678										LT TH RT LBPT THRU RGHT					
NB	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750	
SB	125	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750
BB	0	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750
WB	150	0	0	0	N	0.0	0	2	2	2	3	1.00	1.00	1.00	1750

LANE ADJ PHASE LANB L APRCH
LANE WIDTH ADJ SAT ORDRBR GROUP O DBLAY
GROUP (PT.) VOL VOL FLOW V/S 12345678 G/C CAPAC V/C DBLAY S & LOS

NB L	12.0	49	49	1646	0.030	4		0.078	128	0.383	30.9 D	41.0
T	12.0	332				5					C	
R	12.0	63				5						
TR	12.0	395	395	1691	0.234	5		0.244	413	0.956*	42.2 B	

SB L	12.0	224	224	1646	0.136	4	6	0.144	238	0.942*	59.8 R	28.9
T	12.0	386	386	1733	0.223	56	0.322	558	0.691	19.3 C	D	
R	12.0	220	95	1473	0.064	56	0.322	475	0.200	14.3 B		

BB L	12.0	160	160	1646	0.097	12		0.111	183	0.875*	53.6 B	17.4
T	12.0	692				23					C	
R	12.0	32				23						
TR	12.0	724	724	760	0.221	23		0.500	1721	0.442	9.4 B	

WB L	12.0	68	68	1646	0.041	1		0.067	110	0.620	38.0 D	13.5
T	12.0	881	925	3465	0.267	3		0.444	1540	0.601*	12.7 B	B
R	12.0	243	93	1473	0.063	3		0.444	655	0.142	9.6 B	

*CRITICAL LANE GROUP DBLAY= 22.0 SBC/VBH V/C =0.76 LOS=C

INT=PGPMITPM. INT, VOL=BXP. PMV+PGP. PMV+C. PMV+D. PMV, CAP=... LOSCAP.TAB



December 5, 1995

Paul Bickner, Senior Planner
 City of Novato
 Community Development Department
 901 Sherman Avenue
 Novato, CA 94945

RE: Novato General Plan, revised draft, and Environmental Impact Report

Dear Mr. Bickner:

The Bay Trail Project has reviewed the revised Draft General Plan and EIR, and would like to make the following comments:

Since the first draft was issued, the City of Novato has accepted the Hamilton Field Reuse Plan, which includes a new alternate alignment of the Bay Trail at Hamilton. That plan recommends breaching the outer Hamilton levee to restore the airfield to wetland, and adopting a new Bay Trail alignment along the levee planned to be constructed inside the runway by the New Hamilton Partnership. We believe that this will be a useful part of the multi-use trail system at Hamilton, linking planned and existing residential and recreation areas. The comment at EN-49.5 regarding the alternative along the NWP right-of-way / Marin cross-county bikepath remains accurate.

#B1

As stated in our letter of comment on the first draft, dated August 11 of this year, we request that, as a multi-use trail, Bay Trail alignment be incorporated into both the Trails and Bikeways maps. This would expand opportunities to secure funding for the trail. AB414, for example, passed this year by the State Legislature, provides funding for bicycle projects if they are included in a local or county transportation or congestion management plans. Having both the city and county plans consistently reflect planned trail routes and bikeways is an important criterion for funding eligibility.

#B2

Thank you for the opportunity to comment on Novato's General Plan. We join you in looking forward to the plan's successful completion and approval.

Sincerely,


 Brian Wiese
 Trail Development Coordinator

cc: Steve Petterle, Marin County Open Space District
 Novato General Plan Final Environmental Impact Report

Page 8

Response to Letter from Brian Wiese, San Francisco Bay Trail (ABAG)

- B1. This comment is noted for the record. As no question is asked, no additional response is required.
- B2. This comment is noted for the record. The City should consider incorporating this request into the final General Plan.



MARIN MUNICIPAL WATER DISTRICT

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220 Nellen Avenue
Corte Madera, CA 94923-1169
415.924.4600
FAX 415.927.4953

December 12, 1995

Paul Bickner, Senior Planner
The City of Novato
900 Sherman Avenue,
Novato, CA 94945

Subject: Draft Novato General Plan & EIR

Dear Mr. Bickner;

Our staff has reviewed the Draft Novato General Plan and the Draft EIR for said Plan. It is understood that a more detailed description of the public water system of Novato is contained in your Existing Conditions Report, which is not part of the package we received. As a result our analysis does not consider the information contained therein.

DRAFT NOVATO GENERAL PLAN

VIII-2 notes some of the water generated by Marin Municipal Water District comes from "two other south county reservoirs". While it is a matter of interpretation where the north/south dividing line is located in Marin it should be noted that the two reservoirs are located in a more northerly direction. Nicasio Reservoir is located on a line due west of Ignacio and Sculajule Reservoir is located north and west of Novato.

DRAFT NOVATO GENERAL PLAN ENVIRONMENTAL IMPACT REPORT

Page 189 notes a few limited facts regarding this District which are essentially correct. However, the report notes that government lands currently served by MMWD at Hamilton will be served by NMWD once the area reverts to private ownership. Please note that the two water districts are negotiating the service area boundary line, however, there are no firm agreements. I believe we must continue to consider the option that

#C1

MMWD will continue to serve some, if not all, the area in the future. If consideration is given to Hamilton being fully served by NMWD the additional demand on the NMWD aqueduct may be significant. #c1

If you have any questions please contact me at 924-4600 extension 291.

Sincerely,



Eric McGuire
Environmental Services Coordinator

U:\DOCS\NOVATO\GP.WPD

Response to Letter from Eric McGuire, Marin Municipal Water District

- C1. The comment is noted for the record. It is assumed that if Marin Municipal Water District continues to provide water to some of this area that it has the resources to do so. Otherwise, water could be provided by North Marin Water District as stated in the Revised Draft EIR on pages 189-193.

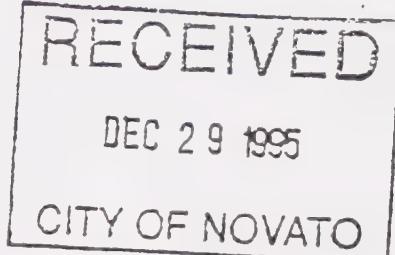
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Marin County Community Development Agency

Mark J. Riesenfeld, AICP, Director

December 27, 1995

Novato Planning Commission and City Council
Novato City Hall
900 Sherman Avenue
Novato, CA 94945



RE: Draft Revised Environmental Impact Report for Novato General Plan

Dear Planning Commissioners and City Council Members:

Listed below are comments and questions from the Planning Division of the Marin County Community Development Agency on the draft Revised Environmental Impact Report for the Novato General Plan. The County has previously submitted comments on the recommended preferred alternative, the scope of the EIR and the previous draft EIR.

1. Page 12, Table 2. What is the base year for the existing development numbers? The Revised Novato General Plan states that the existing number of housing units and commercial square footage includes development that is not yet built. This has implications for traffic modeling. If projects which have not been built are considered "existing" for traffic modeling purposes, the existing conditions are overestimated and the future conditions have been underestimated. More importantly, this methodology is not consistent with the regional transportation modeling which is done for the Congestion Management Plan. #D1

It is important to understand the underlying assumptions for the development of the estimates of potential development. What methodology was used to generate the buildout potential? Were the buildout projections based on the existing zoning or were they based on the development potential which could be allowed under the City's General Plan land use designation? Was the same method for determining buildout used for large sites and smaller sites? The Alternatives Report stated that an additional 15% was added to the potential development of the large sites to account for infill development. Was this the method used in the preparation of the General Plan?

2. Figure 2 - Planning Area. This figure shows the Novato Planning Area, the Sphere of Influence as proposed in the draft Plan, and the Novato city limits. It would be helpful if the map showed the difference between the present Sphere of Influence and the expansion proposed in the 1995 draft Novato General Plan. #D2
3. Page 12 & 13. Table 2 shows existing and potential non-residential square footage for the Sphere of Influence and Table 3 shows the existing and potential number of residential units within the #D3

city and within the Sphere of Influence. The existing and potential non-residential square footage for the city limits should be shown in Table 3 or in a new table.

#D3

4. Page 31. The Draft Revised Novato General Plan is not consistent with the Airport Land Use Plan as stated on this page. It appears that the Conservation 60 designation would not allow any development except the one dwelling unit per 60 acres on each of the properties situated between the airport runway and Highway 101. A residence on these sites, located within the Traffic Pattern Zone, would be inconsistent with the policies of the Airport Land Use Plan. #D4
5. Page 43. The second paragraph states that Alternative #1 (Existing General Plan) would generate more traffic than all of the Alternatives except Alternative #3 (Increased Development). Since Alternative #1 has significantly more development potential than Alternative #3, why is Alternative #3 designated as the alternative with the highest traffic generation? #D5
6. Page 44. It is unclear why Alternative #3 would be ranked at the bottom of the list when Alternative #1 would allow for more development. #D6
7. Page 45a, Table 6. The Impact & Mitigation Summary Table lists three impacts (Impact 4.11-D, Impact 4.12-A, and Impact 4.13-A) as potentially significant after mitigation. The text states that these impacts have been mitigated to a level of insignificance. The table should be revised to be consistent with the text. #D7
8. Page 48, (#4). What development potential was assigned to the Bel Marin Keys site for the purpose of the traffic analysis? #D8
9. Page 104. EN Program 1.1 is cited as a mitigation measure for Impact 4.3-A. It is unclear from the language of the program whether the adoption of the Novato General Plan will actually establish the Watercourse Protection Overlay Zone (EN Map 1) or whether the zone will be delineated and regulatory standards adopted at a later date. If the Overlay Zone and accompanying regulatory standards and requirements for permits will not be established until sometime after the plan is adopted, the program is really a future action and cannot be relied upon for mitigation. The EIR should recommend that the General Plan language should be clarified to ensure that the provisions of Program 10.2 are enacted upon adoption of the Plan. It is important that specific measures are included in the plan itself to mitigate potential impacts. For example, some of the policies and programs listed under Objective 1 (Protection of Streams) contain specific measures which will be beneficial in mitigating the potential impacts. The provisions of Policy EN 4 (Erosion Control) include very specific language regarding when grading work can be done. This type of policy provides effective mitigation; however, Program EN 7.1 (Water Quality) only states that practices will be developed to protect water quality. The development of unspecified "practices" does not constitute effective mitigation. The EIR should recommend that the language of these programs be strengthened. #D9
10. Page 106, EN Policy 11 & 12. It is unclear whether the plan actually establishes the Bayfront Protection Overlay Zone (EN Map 2) or whether the zone will be delineated and regulatory standards adopted at a later date. It would appear that the zone would only be established after the zoning ordinance is revised (EN Program 11.1). If this is the case, then none of the policies related to the Bayfront Protection Overlay Zone would be implemented until the zoning ordinance #D10

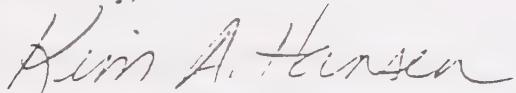
is revised. The plan and/or EIR should contain policies for protection of bayfront areas that would be applied to bayfront areas shown on a map prior to revision of the zoning ordinance. #D10

11. Page 106 and page 115, Impact 4.3-A and Impact 4.3-E. The draft EIR specifically cites Policy 18 and Program 18.1 as mitigating these potential impacts. Policy 18 states that the impact of proposed development on biological resources will be "considered." Program 18.1 states that standards and mitigations will be developed at some point in the future. There is no definition or explanation of what those standards and mitigations will be. This policy and program should be strengthened by indicating what types of standards should be developed. The EIR should not rely on programs which recommend future studies or unidentified measures which will be completed at some point in the future. #D11
12. Page 117, Impact 4.3-F. The additional mitigation suggested in the DEIR would be limited to regulating broom, acacia, and pampas grass. Mitigation should be added to protect native vegetation and discourage the planting of exotics throughout the planning area, regardless of location. Other non-native plant species (particularly invasive species) should also be addressed. #D12
13. Page 121. Table 10. The second paragraph states that Table 10 shows the buildout projections used for assessing traffic impacts. Since the figures used in Table 10 are consistent with the figures in Tables 2 and 3 on pages 12 and 13, it appears that only the existing and potential development within the Sphere of Influence was included in the traffic analysis and that existing and future development at Bel Marin Keys was excluded from the analysis. In order to ensure meaningful traffic studies, it is important that the estimates of future traffic be based on regional and cumulative development potential. This may necessitate including additional data for properties outside the Sphere of Influence (SOI). This analysis is necessary for determining future cumulative traffic impacts. #D13
14. Page 123, Existing Conditions. The first sentence of this paragraph indicates that the traffic analysis was based on traffic volume and operations present in 1993. The plan indicates that the data used for the traffic analysis is from 1995. What data was used for the traffic analysis and what was the base year? #D14
15. Page 178. Additional Mitigation Measures Suggested. The preparation of a constraints analysis at a future point in time does not provide mitigation for the future development which might alter views along an "entryway." The mitigation measure would need to contain specific parameters outlining what would be included in the constraints analysis that would mitigate the identified impact. For example, within the identified entryways the buildings might be limited to a certain height, color, or material. Is it really necessary to require the preparation of a constraints analysis for these areas? The EIR could recommend that the General Plan contain a set of policies to be applied to development in visually prominent locations. #D15
16. Pages 232 through 234. Table 31. It is clear why there is existing commercial development on properties with a residential designation; however, why there is additional potential commercial and industrial development on residential land? #D16
17. Page 261. Second paragraph. It is not clear why the identity of the agencies who submitted comments on the Countywide Plan EIR (in 1993) is important. It cannot be inferred that because #D17

agencies did not comment two years ago on the Countywide Plan, they would not have concerns #D17
at this point in time. This paragraph should be deleted.

We appreciate the opportunity to comment on this EIR. County staff would be interested in meeting with City staff to review the buildup projections in order to ensure consistency with the County's land use database.

Sincerely,



Kim A. Hansen, AICP
Principal Planner

cc: Farhad Mansourian, Executive Director, Marin County Congestion Management Agency

Response to Letter from Kim A. Hansen, AICP, Marin County Community Development Agency

- D1. The base year is 1995. Projects that had been granted approvals but not yet built were considered as "future" projects for the traffic analysis

The data in Table 2 were developed as part of the Revised Draft General Plan (see Table 1 in the Land Use Chapter of the Revised Draft General Plan) and presented to the EIR consultants. General Plan land use designations were used to determine development potential. The amount of development possible as "infill" was calculated by the City staff using General Plan land use designations and the City's land use database.

- D2. The two differences in the Sphere of Influence are described on page 30 of the Revised Draft EIR.
- D3. The existing square footage is 7,049,696 square feet (from Table 31 of the Revised Draft EIR), and the potential new square footage is 5,342,094 square feet (as described on page 255 of the Revised Draft EIR).
- D4. Our reading of the Airport Land Use Plan (ALUP) does not indicate that residential development is prohibited. The ALUP allows residences to be constructed in the Traffic Pattern Zone if it can be shown that there is no part of the parcel located outside the Traffic Pattern Zone (Policy SZ-4.1 - Exceptions). The ALUP Compatibility Matrix (Table 4.1) shows that residential zonings are not allowed. However, residences associated with agricultural uses are not prohibited. Thus, it appears that the few residences associated with the proposed City General Plan land use designation are not prohibited by the ALUP. Nevertheless, residential development adjacent to an airport is never recommended and is obviously not the intent of the ALUP.
- D5. The statement in the Revised Draft EIR is incorrect. The sentence at the end of the cited paragraph on page 43 should read *It will generate more new traffic than any alternative except Alternative 3 thereby aggravating congestion on Highway 101 and Highway 37, as well as other streets.*
- D6. The two alternatives should be reversed so that Alternative 1 is ranked No. 6 and Alternative 3 is ranked No. 5.
- D7. This comment is correct. The ranking for each of these impacts in the Impact and Mitigation Summary Table should be "LS" (Less than Significant).
- D8. Potential development in Bel Marin Keys as well as other areas outside the SOI were taken from the County's (CMA) traffic modeling.
- D9. EN Policy 9 defines wetlands, and EN Policy 10 states that these wetlands shall be preserved. These policies guide future development when the General Plan is adopted. EN Program 10.2 will require development to avoid wetlands to the maximum extent possible. Likewise, this program will become effective when the General Plan is adopted. We concur that it is unclear whether the actual Wetlands Protection Overlay Zone will be in place upon adoption of the Plan. As EN Program 10.1 states, this zoning will include specific standards aimed at preserving and enhancing wetlands. It will establish a permit process for development in wetland areas. Development of the standards and permitting process will occur

after adoption of the General Plan. However, between the time the General Plan is adopted and this zoning is enacted, new development will still be subject to the policies and the program listed above that require protection of wetlands. Perhaps this fact could be clarified by stating that all wetlands as defined by EN Policy 9 will be subject to EN Program 10.1 upon adoption of the General Plan, but we believe this to already be the case. We disagree that it is necessary to establish the permitting requirements and standards at this point. These standards and the described process will provide a future method for realizing EN Policy 10 and EN Program 10.2. However, the immediate level of protection is provided in EN Policy 10 and EN Program 10.2.

The commentor goes on to state that EN Program 7.1 should include specific practices to protect water quality. The commentor is referred to pages 62-64 of the Revised Draft EIR where other policies and programs aimed at reducing erosion impacts and preserving water quality are listed along with two additional programs recommended by the Revised Draft EIR. It is further noted that, again, the policy (EN Policy 7) states that water resources will be protected. All new development must be assessed for consistency with this policy. In the future, the City will (per EN Program 7.1) develop a standardized list of practices that will facilitate ensuring consistency with the Policy.

- D10. We concur that it is unclear. To ensure that the Zone is established, the Revised Draft EIR will be amended to state, *The Bayfront Overlay Zone will be established as part of the adoption of the General Plan, and all policies related to this Zone (EN Policies 11-17) are effective with Plan adoption.* Amending the Zoning Ordinance per Program 11.1 can occur subsequent to Plan adoption
- D11. We concur that the policy does not necessarily mitigate the impacts. As such, the Revised Draft EIR is amended to state *EN Policy 18 shall be restated to say "Protect biological resources that are necessary to maintain a diversity of animal species."* All new development must then be assessed for consistency with this policy. Again, the City can then develop specific standards to facilitate this review as required in EN Program 18.1.
- D12. This opinion is noted for the record. The recommended program on page 117 of the Revised Draft EIR is aimed at those species that have historically been the most invasive species. Certainly other species could be added to the list or the program could be expanded to incorporate more general language to avoid planting invasive exotics, and the City should consider this request. However, this additional language is not necessary to reduce the impact to a level that is less than significant.
- D13. Potential development in Bel Marin Keys as well as other areas outside the SOI were taken from the County's (CMA) traffic modeling.
- D14. The traffic analysis was conducted in 1995. As part of that analysis, the existing conditions represent traffic volume and operations conditions which were present in 1993. Existing traffic volumes were obtained from the report titled *Evaluation of General Plan Alternatives* (DKS Associates, December 13, 1993). Traffic signal timing information was obtained from City staff.
- D15. We concur that simply requiring that projects on these sites have a Constraints Analysis prepared does not necessarily mitigate visual impacts at these entryways. It is thus recommended that EN Map 3 of the Draft General Plan be amended to include these entryways as defined "scenic areas" thus affording these properties

the protections and scrutiny required of all sites shown on EN Map 3 (that is, subject to policies and programs on pages 175-176 of the Revised Draft EIR). This will ensure that development on these sites is scrutinized to minimize visual effects.

- D16. City staff has replied that the commercial uses existing in residential General Plan designations in Novato are predominantly those that are permitted by use permit in R zoning districts, such as preschools, or those whose zoning is considered compatible with residential use, such as medical offices. Many of the small commercial developments are the result of policies favoring infill, mixed use and neighborhood commercial that produce a better balance of uses in neighborhoods and the Downtown Core. Adaptive reuse of residences provides day care for children and disabled adults and residential care for the mentally ill, as well as space for non-profits and professional services. A large share of the commercial uses are located in the Downtown and along major thoroughfares, such as Novato Boulevard. The DeLong Industrial Park provides some light industrial/commercial spaces in the downtown area. A country club and a homeowner's association recreational facility occur in planned residential districts, and there are a few commercial/industrial establishments outside the city limits, in Bahia and along Highway 37 in the Blackpoint area.
- D17. The cited paragraph notes that Sonoma County did not submit comments on the Draft EIR and the Revised Draft EIR for the Novato General Plan. This maintains their historic position (i.e., that they did not comment on the Countywide Plan EIR). This is a fact, and there appears to be no reason to delete the paragraph.



BAY AREA AIR QUALITY MANAGEMENT DISTRICT

107

29 December 1995

Paul Bickner
Senior Planner
City of Novato
Community Development Department
901 Sherman Avenue
Novato, CA 94945

Dear Mr. Bickner:

Thank you for giving us the opportunity to comment on the City of Novato Draft General Plan and its Draft EIR.

As you may know, the Board of Directors of the Air District, composed of county supervisors and city mayors and councilpersons, has requested that cities and counties take air quality concerns seriously into account, especially at the critical time of general plan development. Our Board has asked us, as Air District staff, to offer our assistance within the limitations of our resources. We, together with ABAG, have also published **IMPROVING AIR QUALITY THROUGH LOCAL PLANS AND PROGRAMS** (three-volume GUIDEBOOK) expressly oriented to be helpful to your function. It has been sent to your department.

You have employed the services of an experienced air quality consultant in preparing the Air Quality Section of the DEIR. The consultant has recognized that current and projected vehicular traffic constitutes the greatest threat, by far, to Novato's air quality. He incorporated analyses for Marin County (46 receptor sites), including Novato (15 receptor sites), particularly modeling of carbon monoxide concentrations at current and projected congested road segments and intersections. Most importantly you have incorporated the consultant's major recommendations into the General Plan itself and integrated them with other community goals and programs, e.g. an emphasis on alternatives to automobile use through acquisition of a railroad right-of-way for future transit, development of park-and-ride lots, bus shelter improvements, increased residential density

near major transit stations. The General Plan also promotes interjurisdictional and subregional planning, critical to adequate air quality management in northern Marin County.

There is at least one error in the draft EIR, perhaps typographical, and some of the information is out-of-date. The text attributes 8% of Marin County particulate emissions to motor vehicles; it should read "almost 80%" (EIR page 153). It would also display more current information if the General Plan (page IV-6) and the EIR (pages 152 through 157) were to quote the Bay Area 1994 Clean Air Plan rather than the 1991 Clean Air Plan. In addition, it would be more up-to-date if the General Plan recorded that the Bay Area is currently classified as in attainment of the National Ambient Air Quality Standards for ozone and has achieved the standard for carbon monoxide (page IV-5); the General Plan and EIR are correct in pointing out that we are nonattainment of the more stringent State ozone and fine particulate standards. There is also much more information readily available if you wish to include further details about air quality background conditions in and around Novato (see GUIDEBOOK, Appendix D, especially pages D-12 and D-13 concerning Marin County (Air) Basin and the maps and tables of Appendices C and D). However these points would make little substantive difference relative to the more important issue of air-quality planning measures that are appropriate for Novato.

We agree with your Plan and EIR findings that air quality is not currently a significant problem in Novato. We are pleased that, even so, you have promulgated planning and transportation measures that would improve air-quality or prevent its deterioration. Nonetheless, because the future of Novato and its subregion is less certain, there are factors that need to be closely monitored to assure that the estimates in the General Plan and EIR have not been overly optimistic vis-a-vis air quality. A monitoring system would also alert the city to problems, if any, in the implementation of planned improvements in public transportation, transit oriented developments, and other measures beneficial to air-quality. These would include monitoring changes in traffic volumes generated by the build-out of such developments as Hamilton Field, Bel Marin Keys, city redevelopment, the industrial area west of Gross Field, and the Buck Center for Research of the Aging. Also critical could be the expanding commute traffic through Novato as Sonoma County develops to the north.

If the monitoring system reveals that the population, job and/or vehicular trip projections in the General Plan are exceeded, there would be increased congestion on roads in and near Novato, reduced levels of service and, consequently, more emissions than have been projected. If such deterioration should become significant the City should plan and apply additional transportation, land-use and related air-quality-beneficial measures (such as outlined in the GUIDEBOOK–Volume I, pages 14 through 19, and Appendix E).

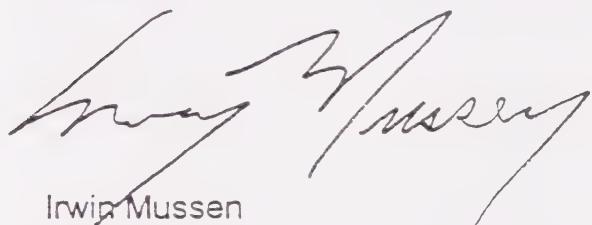
#E1

#E2

The Draft General Plan and Draft EIR recognize some non-transportation air quality issues such as construction dust control and, of course, industrial developments. Among air quality issues that could arise in Novato and its vicinity—which I have not found discussed in the Draft General Plan or EIR—are woodsmoke emissions of fine-particulate, carbon monoxide and toxics from non-EPA-approved fireplaces and woodstoves; the need for buffer zones to separate sensitive receptors from certain industrial and other odiferous or otherwise noxious facilities; and street-tree planting opportunities. These and other non-transportation related matters are also discussed throughout the GUIDEBOOK (especially in Appendix E).

Please do not hesitate to call on me if you have questions or if I can be of any further assistance.

Sincerely,



A handwritten signature in black ink, appearing to read "Irwin Mussen".

Irwin Mussen

Principal Environmental Planner

Response to Letter from Irwin Mussen, Bay Area Air Quality Management District

- E1. The cited error should be corrected to state that 80 percent, and not 8 percent, of particulate emissions are attributed to motor vehicle emissions. The other updated information provided by the commentor is noted for the record. As the commentor states, these new data do not alter the conclusions or recommendations of the Revised Draft EIR.
- E2. We concur that the City would be wise to monitor traffic congestion to ensure that air quality is not adversely affected. The City should add a program to EN Policy 32 that incorporates the monitoring recommendations made by the commentor.
- E3. It is true that particulates emitted from woodburning stoves and fireplaces were not assessed in the Revised Draft EIR. Burning wood can generate substantial amounts of particulates. These emissions can be especially adverse during certain periods of the year when inversions occur. The method used to control such emissions in areas where woodsmoke is a significant problem is to require that all new development be installed only with woodstoves and/or fireplaces that meet the most current EPA standards for particulate emissions. Omission of this impact was an oversight in the Revised Draft EIR. This impact should be incorporated. The impact is potentially significant. The mitigation is to add a program under EN Policy 34 that states, "If fireplaces or woodburning stoves/heaters are installed in new development, these fireplaces, stoves, and/or heaters shall meet the most current EPA standards regarding particulate emissions."

It is likewise true that the Revised Draft EIR did not assess the potential impacts of allowing sensitive receptors to be placed near odoriferous or otherwise noxious facilities. It was assumed that such site-specific impacts would be addressed through the CEQA process and the City's normal development review process. To clarify this situation, it is recommended that a program be added to EN Policy 34 that states, "Review all new industrial development for potential air quality impacts on sensitive receptors. Require adequate buffer zones between industrial development and sensitive receptors to ensure public health and to prevent odor-based nuisance."

As regards street-tree planting, this is addressed to some degree in the Community Identity Chapter of the Revised Draft General Plan (e.g., CI Policy 2). Again, the City may wish to codify existing policies by including a program under EN Policy 34 that states that the City will encourage street-tree planting to improve local air quality.



NOVATO SANITARY DISTRICT

500 DAVIDSON STREET • NOVATO • CALIFORNIA 94945 • PHONE (415) 892-1694 • FAX (415) 898-2278

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Attorney

January 2, 1996

Mr. Paul Bickner, Senior Planner
City of Novato
901 Sherman Avenue
Novato, CA 94945

Post-it™ Fax Note	7671	Date 1-2-96	# of pages 2
To PAUL BICKNER	From BOB BOLICK		
Co./Dept.	Co.		
Phone #	Phone #		
Fax #	Fax #		

RE: Revised Novato General Plan - November, 1995,
Draft EIR - Novato General Plan Revision; November, 1995

Dear Mr. Bickner:

The Novato Sanitary District (District) has reviewed the subject documents. The District had submitted comments on the July, 1995 versions of these documents. We are pleased to see that many of our earlier comments, especially those relating to the roles and responsibilities of service providers like the District, have been incorporated in the most recent documents. The District's comments on the present versions of the General Plan and DEIR follow.

NOVATO GENERAL PLAN - REVISED DRAFT, November, 1995

#F1

Chapter I: Land Use

Growth Management - LU Objective 2 (Page I-17)

Land Use Policy 7, Growth Management, discusses the relationship between development and the available and planned capacity of infrastructure and public services. Program 7.2 requires CEQA analysis of proposed developments for infrastructure capacity and services. This program would require project redesign and/or developer funding necessary improvements if available capacity would be exceeded. However item (c) would allow approval of a project that would result in available infrastructure capacity to be exceeded when certain conditions are met. The District requests that this approval be limited only to services or infrastructure that the City controls, not that within the jurisdiction of other service providers.

Mr. Paul Bickner
January 2, 1996
Page 2

Chapter IV: Environment

Watercourses, Wetlands, and Bayfront Areas (Page IV-12)

#F1

EN Policy 1, Ecology of Creeks and Streams, would establish a Watercourse Protection Overlay Zone for Simmons Slough and Novato Creek. The proposed 50 foot overlay zone would encompass the levees along each of these watercourses, and would also encompass portions of the District's existing reclamation facilities. The District requests that the overlay zone allow for continued operation and improvement of District reclamation facilities that lie within the zone. The zones should also specifically allow maintenance of existing levees, including periodic raising of the levees to provide continued flood control protection.

Chapter VIII: Public Facilities and Services

Wastewater Treatment and Disposal

Page VIII-2: This section makes the statement that the District's wastewater treatment and disposal system is more than adequate for buildout under the General Plan. This conclusion was based on dwelling unit data provided by the City's consultant team in late May, 1995. Table 1 in the Land Use Chapter of the Revised General Plan shows that approximately 2,700 more residential units could be built than indicated in the earlier data.

The District has made preliminary flow projections based on the buildout projections and determined that wastewater flows may marginally exceed current treatment and disposal capacity (6.55 MGD) at buildout. It appears that the District can accommodate flows from the 2010 growth projections without exceeding existing system-wide capacity, based on current occupancy and unit flow rates.

The foregoing comments apply to the District's system-wide treatment and disposal capacity. As stated in the Draft General Plan, the District operates 2 treatment plants that serve the Novato area. The General Plan and DEIR should note that the District must expand the Ignacio Treatment Plant to accommodate buildout growth in that plant's service zone.

DRAFT EIR- NOVATO GENERAL PLAN REVISION

Section 3.0 Summary Section (Page 450)

Table 6 (Impact and Mitigation Summary), Impact 4.9A mitigations refers to the Draft General Plan Economic Development and Fiscal Vitality Chapter policies as mitigations for additional wastewater flows that will be generated by future

Mr. Paul Bickner
January 2, 1996
Page 3

development. That Chapter of the Draft General Plan is not included in the copy submitted for District review, so we cannot comment on the adequacy of the proposed mitigation measures.

#F1

Section 4.9 B. Impacts and Mitigations (Page 182)

Impact 4.9-A. System Capacity. This paragraph should be modified to reflect the statements made earlier in this letter regarding system-wide capacity.

#F2

Thank you for the opportunity to review the subject documents. Please contact me if you have any questions or need additional information.

Sincerely,

Thomas S. Selfridge

Thomas S. Selfridge
Technical Services Manager

tss

cc: Chris DeGabriele, North Marin Water District

C:\TSS\WORD\LETTERS\NGP_2.DOC

Response to Letter from Thomas S. Selfridge, Novato Sanitary District

- F1. These are all comments on the Revised Draft General Plan. No response is required in this FEIR.
- F2. The comment is noted for the record. As the commentor states, NSD must expand the Ignacio Treatment Plant to accommodate buildout growth.

91

KRAUSE & BASKIN

— Attorneys at Law —
1120 NYE STREET, SUITE 300
SAN RAFAEL, CALIFORNIA 94901

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Of Counsel

TELECOPIER: (415) 456-1580

December 18, 1995

Via Facsimile and U.S. Mail
Telecopier No. (415)899-1487

Paul Bickner, Senior Planner
Community Development Department
The City of Novato
901 Sherman Avenue
Novato, CA 94945

Dear Mr. Bickner:

This office represents L.D. Minor Properties, who is the owner of Assessor Parcel No. 160-020-44 and No. 160-020-31, otherwise known under the Preferred Plan Alternative as "Pacheco Ranch No. 32B".

Our clients have requested our office to represent them to address the issue of the rezoning of the above described property under the new General Plan. The property is currently zoned under the 1981 General Plan as partially R01 (.1 to 1 du/acre), partially R1 (1 to 5 du/ac) and partially R10 (1 to 10 du/ac). The city proposes in its new General Plan to re-zone Parcel No. 160-020-44 to Con -10 (Conservation 10 or 1 du/10 acres).

Our clients submitted in 1992 a proposal titled "Las Lomas Master Plan" to the planning department which called for the construction of approximately 74 units spread over the property. At the time of the drafting of this proposal, it met the zoning requirements of the site. We understand from discussions my paralegal has had with some of your assistant planners that the proposal was received but returned due to an inadequate or deficient Environmental Impact Report.

Unfortunately in late 1992, L.D. Minor, the president of L.D. Minor Properties became ill and all work on the project stopped. During this period of inactivity, the decision was made by the Novato City Council to begin plans to revise the city's General Plan. During the period of late 1994, when the Preferred Plan

Mr. Paul Bickner
December 18, 1995
Page 2

Alternative was being reviewed by the public and the City Council, Mr. Minor's illness worsened, which prevented his participation in the process, and in December 1994, Mr. Minor passed away. His surviving spouse, Oma Minor, and his grandson, Keith Minor, as vice president of L.D. Minor Properties have recently contacted my office and asked that we assist them in addressing the rezoning of the property under the New General Plan.

We have now had an opportunity to review the extensive amount of documents surrounding the revision of Novato's General Plan and feel that it would be prudent at this juncture, prior to any final decisions regarding the New General Plan are made, to get in contact with you in order to set up a meeting to discuss the possible zoning of this property.

I understand the process is well along the way and apologize for our late entry into the discussion and review process. However, our clients' late realization of the problem and the loss of Mr. Minor prevented a more timely intervention.

It is understood that as a result of the property's development constraints, e.g. steepness of slopes, it is not likely to sustain a development of 74 townhouses as the current combined zoning appears to allow. However, it seems that the location of the property along the well-developed Alameda Del Prado and along the 101 corridor make it suitable for a housing development of more than 1-2 homes. Indeed, to so severely limit development with the currently proposed down zoning classification would essentially make the property worthless.

It is certainly hard to imagine the property having only one or two homes the development cost of which would cause pricing of over a million dollars each. In contrast, a larger number of homes would allow for more moderately priced housing as desired by the Minors. Moreover, the character of development in the area of the property is commercial, multi-family and moderately priced home development. To be more consistent with the neighborhood a higher density is indicated.

In this regard, I am aware of the special effort and designation process that has been gone through with regard to approximately 34 properties of which this is one. It is our request that the designated zoning on this property be reconsidered.

Please submit this letter as part of the "comments" to the EIR and also distribute it to the appropriate Planning Commission and City Council members. Also, would you please call my office so we may arrange to meet and discuss the matter further.

KRAUSE
BASKIN

Mr. Paul Bickner
December 18, 1995
Page 3

Thank you for your assistance and cooperation in handling this matter.

Sincerely,

KRAUSE & BASKIN

Lawrence Baskin /am

Lawrence A. Baskin

LAB:am
cc. Clients

Response to Letter from Lawrence A. Baskin (Krause & Baskin)

This letter contains comments regarding the Revised Draft General Plan. These comments are noted for the record. As it does not ask any questions regarding the Revised Draft EIR, no additional response is possible.

TELEPHONE: (415) 442-0900
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WRITER'S DIRECT DIAL:

BROBECK
PHLEGER &
HARRISON
ATTORNEYS AT LAW

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SAN FRANCISCO
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December 18, 1995

VIA HAND DELIVERY

Honorable Planning Commission
City of Novato
901 Sherman Avenue
Novato, CA 94945

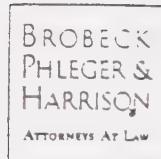
Re: Proposed Amendment of Novato General Plan Land Use
Map with Respect to a Portion of the East of DeLong
Avenue Property (APN 153-111-16)

Dear Commissioners:

As we have previously advised you, this office represents KRM Financial Corporation ("KRM") and Bay Area Financial Corporation ("Bay Area") in connection with their opposition to the proposal by the City of Novato ("City") to change the General Plan land use designation of the approximately 3.8 acres of property owned by KRM and Bay Area located at the eastern terminus of DeLong Avenue in the City ("KRM Property"). The KRM Property is one of several parcels which collectively have been designated as Major Development Site #18 ("East of DeLong Avenue") in the Preferred Plan Alternative (see attached map of Site #18 on which the KRM Property has been highlighted by cross-hatching).

The existing General Plan ("Existing General Plan") designates the KRM Property as Office/Residential ("OR"), which permits development of office uses (personal and professional service-oriented). As part of the City's current General Plan update, the City is proposing to redesignate the KRM Property, along with other Site #18 parcels, to Very Low Density Residential. However, the KRM Property is significantly different from the other parcels which are included in Site #18. It should not have been included in that group of properties and must be removed prior to the City taking final action on the proposed General Plan ("Proposed General Plan").

For example, unlike the KRM Property, almost all of the other parcels in Site #18 are designated either R01 ("Very Low (0-1 du/ac) Residential") or R1 ("Low

December 18, 1995
Page 2

(1-5 du/ac) Residential") in the Existing General Plan (see attached map with existing and proposed designations). Thus, their designations will not be materially changed in the Proposed General Plan. Furthermore, the location and orientation of the KRM Property is completely distinct from almost all of the other Site #18 parcels. Unlike those other parcels, which are located behind the ridgeline and away from the Highway 101 corridor, and which are accessible only from residential areas, the KRM Property is located adjacent to and oriented primarily towards Highway 101 and other properties which have and will retain an office use designation.

In our written comments submitted to your Commission on August 30, 1995, we discussed several specific reasons why the proposed redesignation of the KRM Property should not be approved. Subsequent to that letter, we provided additional comments regarding our concerns to your City Attorney. Those comments to the City Attorney apparently were not made a part of the public record on the Proposed General Plan. Therefore, we are now providing the same comments as a separate letter to your Commission.

Because there have not yet been any revisions to the Preferred Plan Alternative, all of our earlier oral and written comments, including those set forth in our August 30, 1995 letter, are still relevant and we therefore request that they continue to be included as part of the administrative record. For the sake of brevity, our comments in this letter are focused on just one of the key points we have raised to date, the fact that the proposed redesignation of the KRM Property would violate the objectives and policies of the proposed General Plan ("Proposed General Plan"), thus contravening the public interest and creating an internal inconsistency in the Proposed General Plan.

1. *The Redesignation of the KRM Property Would Violate the Noise and Land Use Compatibility Standards of the Proposed General Plan.*

One of the seven mandatory elements of the City's General Plan is the noise element. See Cal. Gov't Code §65302(f). Pursuant to state law, the noise element must use noise contours for all noise sources "as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise." Id. (emphasis added). Contrary to this directive to minimize residential noise exposure, the redesignation of the KRM Property to Very Low Density Residential would expose future residents to noise levels which exceed normally acceptable noise standards.

The Proposed General Plan indicates that noise standards listed therein should be used to evaluate the compatibility between land uses and future noise in the City (page V-24). Traffic noise, particularly noise associated with U.S. Highway 101 and State Route 37, is identified in both the Existing General Plan (page N-10) and the Proposed General Plan (page V-27) as the most significant source of noise in the City. Residential land uses are identified as among the most noise-sensitive uses (Existing General Plan, page N-2). Thus, one would not anticipate that freeways (the loudest sources) and residences (the most sensitive receptors) would be compatible land uses.

#G1

Because of the proximity of the KRM Property to U.S. 101, the Future Noise Contours Map (Map 7) of the Proposed General Plan indicates that the KRM Property will fall between the 60 and 65 Ldn noise contours in the future. However, the Noise and Land Use Compatibility Table (SF Table 3) of the Proposed General Plan identifies the maximum normally acceptable noise level for residential uses as 60 Ldn (Proposed General Plan, page V-25). In other words, if designated for residential use, the KRM Property would be exposed to noise levels in excess of those normally acceptable.^{1/} In contrast, the projected 60 to 65 Ldn noise levels for the KRM Property would be consistent with the normally acceptable noise levels for office buildings (Proposed General Plan, page V-25), the designated use for the KRM Property under the Existing General Plan.

Program 36.1 of the Proposed General Plan (page V-30) establishes that all land use proposals should be reviewed for compliance with the Noise and Land Use Compatibility Standards set forth in the Proposed General Plan. As demonstrated above, the proposal to change the land use designation of the KRM Property to Very Low Density Residential would render compliance with those standards impossible and therefore preclude any development or use of the KRM Property.

2. *The Redesignation of the KRM Property Would Not Be in the Public Interest, as Required by State Law.*

^{1/} Although noise levels of 60 to 70 Ldn may be considered conditionally acceptable for some residential uses, this typically requires noise reduction features including closed windows with air conditioning (Proposed General Plan, page V-25). However, where outdoor use is a major consideration, such as backyards in single family housing developments, the standard for maximum outdoor noise is 60 dB (Proposed General Plan, page V-26). Because the proposed Very Low Density Residential land use designation of the Property would limit development to single-family residences, the conditionally acceptable noise levels over 60 Ldn would not be acceptable.

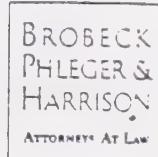
The general plan noise element requirements have been heavily influenced by the State Department of Health Services' Noise Element Guidelines. See Cal. Gov't Code §65302(f) ("The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services"). The underlying purpose of the noise element is to limit community exposure to excessive noise. Office of Planning and Research, General Plan Guidelines (1990) at 10-13; see also Cal. Gov't Code §65302(f)(6). This purpose is underpinned by the health and safety concerns recognized by the State Department of Health Services.

Mindful of this public health concern, the courts have stricken several jurisdictions' land use decisions based on inadequacy of, or inconsistency with, noise elements. See Camp v. County of Mendocino (1981) 123 Cal.App.3d 324 (invalidating a noise element which failed to quantify noise levels, omitted present and future noise contours and was not supported by monitoring data); Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176 (invalidating a conditional use permit for failure to analyze consistency of project with noise element). The noise element thus serves as a mechanism for guarding public health and safety.

As discussed above, the proposed redesignation of the KRM Property to Very Low Density Residential on the Land Use Map would expose future residents of the KRM Property to noise levels in excess of those designated as normally acceptable in the noise element of the Proposed General Plan. This exceedance of normally acceptable noise levels designed to protect the public health and safety would not be in the "public interest", the standard used to judge the propriety of general plan amendments. See Cal. Gov't Code §65358(a).

3. *The Redesignation of the KRM Property Would Render the Proposed General Plan Internally Inconsistent.*

State law requires that "the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." Cal. Gov't Code §65300.5. The consistency requirement is an integral element of the notion of the general plan as a "constitution" for planning. "A document that, on its face, displays substantial contradictions and inconsistencies cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or should not happen." Concerned Citizens of Calaveras County v. Board of Supervisors (1985) 166 Cal.App.3d 90, 97.



"Consistency" in the context of general plans requires equal status among plan elements (Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698); consistency among the elements (Concerned Citizens); consistency within each element (Concerned Citizens); area plan consistency with the general plan (Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles (1986) 177 Cal.App.3d 300); and text and diagram consistency. General Plan Guidelines at 10-13. The redesignation of the KRM Property to Very Low Density Residential would violate the requirement for consistency among the elements.

As noted above, the redesignation of the KRM Property to Very Low Density Residential on the Land Use Map would render compliance with the Noise and Land Use Compatibility Standards of the Proposed General Plan impossible. The normally acceptable noise standards applicable to the KRM Property would be violated and practical problems, such as the topographical features of the site, would preclude compliance with the conditionally acceptable noise levels.^{2/} As a result, the Land Use Map and Noise Element would conflict, rendering the Proposed General Plan internally inconsistent such that those subject to the Proposed General Plan would have difficulty understanding "what should happen" on the KRM Property.

This conflict between the Noise and Land Use Elements of the Proposed General Plan is only one example of the internal inconsistencies which would be caused by the proposed redesignation of the KRM Property. As discussed in the "Report on the Planning Analysis of APN 153-111-16 Under the Proposed Novato General Plan" which we submitted to the Planning Commission on August 30, 1995, the redesignation would also cause conflicts with the air quality, jobs/housing balance and downtown-focused development policies and goals of the Proposed General Plan.

An internally inconsistent general plan is invalid when approved and subject to attack as an arbitrary and capricious enactment. See id. at 103. The

^{2/} The Draft Environmental Impact of Report on the Novato General Plan Amendment ("Draft EIR") acknowledges that a residential project proposed where the Ldn exceeds 60 dB would result in a significant impact, but suggests that this impact would be mitigated to a less than significant level through implementation of noise mitigation measures such as insulation and noise barriers (page 158). However, in this specific instance, the nature of the Property precludes successful mitigation. For example, sound walls constructed on the Property line (to a reasonable height) cannot effectively attenuate noise in light of the sloped nature of the Property. Moreover, noise insulation will do nothing to mitigate outdoor noise levels, which are of significant concern in single-family residential communities. See supra, fn. 1. The Draft EIR does not address the possibility that noise may not be mitigable, thus resulting in significant unavoidable noise impacts in some circumstances.

redesignation of the KRM Property would cause the Proposed General Plan to be internally inconsistent and thus vulnerable to immediate challenge.

In summary, the proposed redesignation of the KRM Property from OR to Very Low Density Residential would contravene the noise policies of the Proposed General Plan, breach the public interest standard required for General Plan amendments and render the Proposed General Plan internally inconsistent. As a result, the proposed redesignation cannot be approved.

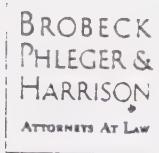
4. *As a Good Faith Gesture, the Pending Litigation Against the City Has Been Dismissed*

Since 1994, the proposed redesignation of the KRM Property's land use has prevented (as a practical matter), the development, or marketing of the KRM Property for office uses. The City's recent extension of the General Plan update process continues the uncertainties which are hindering development and/or marketing of the KRM Property.

As we have discussed previously, concern about the proposed redesignation and its impacts led to the filing of a lawsuit by the previous owner of the KRM Property against the City in the Marin County Superior Court on March 9, 1995 ("Pending Marin County Litigation"). The causes of action against the City set forth in that litigation included (1) actions to enforce the City's promise (set forth in the "Stipulation" previously entered into to settle litigation brought by the Friends of East Novato) not to prevent office development of the KRM Property, and to declare the KRM Property owner's vested right to develop such uses under the Stipulation, and (2) an inverse condemnation action based on the proposed General Plan land use designation.

The rights of the previous owner of the KRM Property in the Pending Marin County Litigation were recently assigned to KRM and Bay Area. In an attempt to work cooperatively with the City in resolving our clients' concerns about the Proposed General Plan outside of the courtroom, we reached an agreement with your City Attorney to dismiss the City from the Pending Marin County Litigation and, instead, to seek a resolution of the issues as part of these administrative proceedings. A stipulation dismissing the City from that litigation was finalized and filed with the Court on December 14, 1995. We trust that this same spirit of cooperation will continue throughout the remainder of the General Plan proceedings.

Honorable Planning Commission



December 18, 1995

Page 7

In closing, we respectfully request that your Commission consider what we believe are persuasive arguments for maintaining an office land use designation for the KRM Property and that it recommend to the City Council (1) that the KRM Property be taken out of Site #18, (2) that it not be designated for Very Low Density Residential use, and (3) that the KRM Property receive a designation of "Limited Business and Professional Office" in the new General Plan.

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink that reads "Jeff Brinton". Below the signature, the name "C. Jeff Brinton" is printed in a smaller, sans-serif font.

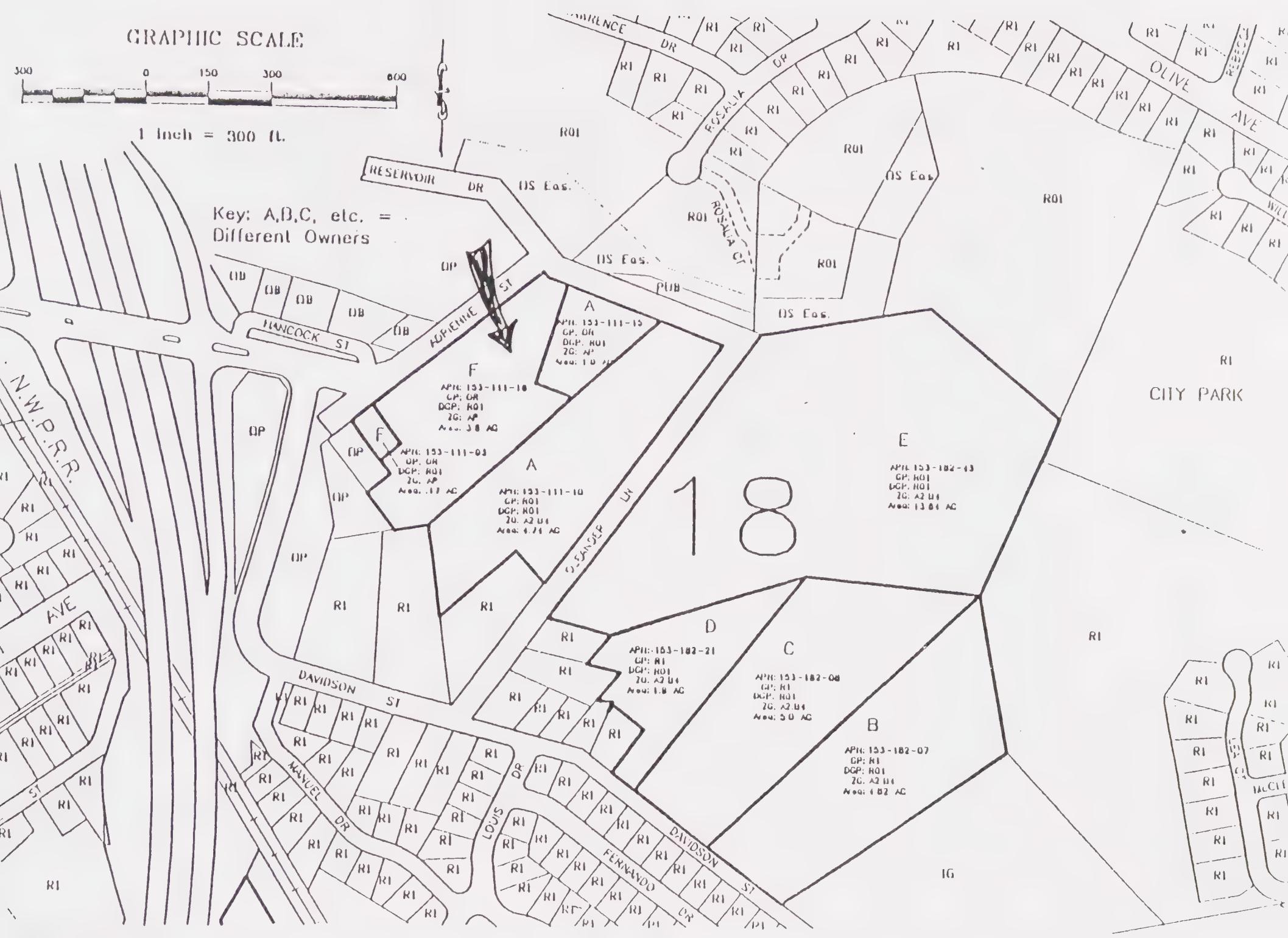
cc: Ashton F. Pitts, Jr.
Jeffrey Walter, Esq.

GRAPHIC SCALE



1 Inch = 300 ft.

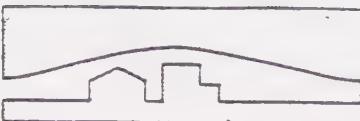
Key: A,B,C, etc. =
Different Owners





Response to Letter from C. Jeff Brinton (Brobeck, Phleger & Harrison)

- G1. It is true that it appears that at least some of the property in question has predicted noise levels exceeding 60 Ldn (dBA). It must be noted that the noise contours shown on Figure 17 were developed for General Plan purposes only - they are not intended to accurately describe the specific noise environment on any site which will be dependent on topographic and other factors not accounted for in Figure 17. If a site-specific noise analysis indicates that noise on this parcel exceeds 60 Ldn (dBA), then residential development of the site would be inconsistent with noise-related policies of the Revised Draft General Plan. Residential development would have a potentially significant effect on future residents. This possibility should be considered by the City which may wish to either change the land use designation now or otherwise provide for such a change when site-specific noise studies indicate that noise on the site exceeds 60 Ldn (dBA).



33

PAUL A. JENSEN, AICP
Policy/Environmental Planning and Processing

55 Mitchell Blvd., Suite #10 San Rafael, California 94903
(415) 479-9433 FAX (415) 472-3137

December 18, 1995

Chairman Ned Lugin and
Members of the Planning Commission
City of Novato
900 Sherman Avenue
Novato, California 94945

Subject: Novato General Plan Update, Draft Plan and DEIR, November 1995;
Site #19, Novato Creek Landing Property (Windmill House)

Chairman Lugin and Planning Commissioners:

This letter is being submitted on behalf of the First Federal Savings and Loan Association of San Rafael, owner of the vacant land located at 200 Creek Landing Court (referenced as Site # 19 in the Revised Draft General Plan). This vacant site consists of 3.42 acres located immediately west of Highway 101 and just south of the 'Windmill House'. This property is part of the Novato Creek Landing Master Plan area, which includes two other parcels that are developed with warehouse, light industrial and office uses.

In August 1995, a letter was submitted to the Planning Commission addressing our concerns and comments on the July 1995 Draft General Plan and DEIR. In that letter, we raised a number of questions regarding land use and development policies that we found pertinent to Site #19. We have had an opportunity to review the Revised Draft General Plan and accompanying DEIR dated November 1995. While we have found that the revised documents adequately address many of our earlier comments, we do have some additional comments which warrant attention. These comments are as follows:

1. Page 1-8, LU Table 2 (Land Use). Site #19 on this table references the 'Windmill House'. This reference should be corrected. The 'Windmill House' is located on developed land located *north* of Site #19. The site should be referred to as 'Novato Creek Landing- Office'. Furthermore, please correct the site acreage; the site contains approximately 3.45 acres, not 3 acres.] We support the maximum development potential estimate of 53,666 square feet of nonresidential use. #H1
2. Page 1-10, third full paragraph (Land Use). This paragraph clarifies that land use density and intensity is to be based on *gross* site area. We support this language. #H2

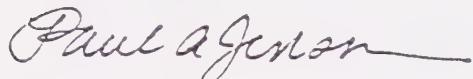
Chairman Ned Lugin and Members of the Planning Commission, December 18, 1995

3. Page 1-12, LU Table 3 (Land Use). The *Business and Professional Office* land use designation presented on this table is recommended for Site #19. This designation permits a maximum floor area ratio of (0.40). We support this designation for Site #19. #H3
4. LU Map 1 (Land Use Map). This map identifies the land use designations recommended for properties within the Novato Planning Area. The map incorrectly designates Site #19 for *Limited Business and Professional Office (maximum 0.25 FAR)* use. This land use designation was deleted prior to the preparation of the July 1995 Draft Plan and DEIR. Please correct. #H3
5. Page IV-4, Ridgelines and Other Scenic Resources & EN-Map 3, Scenic Resources (Environment). The draft text and EN-Map 3 reference and identify areas of scenic resource. In our earlier comments, we were concerned that 'ridgelines', specifically those of local significance, had not been identified or mapped. We had requested this information to determine if Site #19 contained a ridge or other scenic resources. Neither the text nor EN-Map 3 have been amended to specifically locate ridgelines. However, we believe that the DEIR responds to our earlier concern. On page 174 of the DEIR, the discussion for Impact 4.8-A identifies those sites which contain scenic resources; site #19 is *not* among the sites that are listed. Therefore, we must conclude that Site #19 does not contain scenic resources. Please confirm. #H5
6. Page IV-19, EN Objective 7 (Environment). In reviewing the revised text, we find that former Objective 7 (July 1995 draft), which addressed environmental constraints, has been deleted. There is no longer reference to 'slopes of more than 15%' as being constrained. To confirm this conclusion we reviewed the Matrix-Response to Public Input on Public Hearing Draft General Plan, July 1995. On page 7 of this matrix, it is noted that the Revised Draft General Plan would not prohibit development on slopes in excess of 15%. We believe that this provides an adequate response to our previous comment. #H6

Chairman Ned Lugin and Members of the Planning Commission, December 18, 1995

Thank you for the opportunity to provide comments. We look forward to a response to our comments.

Sincerely,



Paul A. Jensen

cc: Gregg Elberg
First Federal Savings and Loan Association of San Rafael

nvcrkgp3.wps

Response to Letter from Paul A. Jensen, AICP

- H1. The clarifications regarding the name of the site and the acreage are noted for the record. These changes are hereby incorporated.
- H2. This comment is noted for the record.
- H3. This comment is noted for the record.
- H4. This change has been made, and the site is now designated as Business and Professional Offices (FAR of 0.4).
- H5. Whether a particular site is located within EN Map 3 is beyond the scope of this EIR. City staff (Westfall, personal communication) has noted that this map may be amended prior to adoption of the General Plan. In addition, the map is for General Plan planning purposes only. Its accuracy regarding a particular small site cannot be decisively stated, as this was not the purpose of the map.
- H6. This comment is noted for the record.



95

Paul

December 19, 1995

Novato Planning Commission and City Council
Novato City Hall
900 Sherman Avenue
Novato, Ca 94945

Dear Planning Commissioners and City Council Members

The following comments pertain to the Revised Draft General Plan and include suggested changes in wording as well as some concerns regarding the database and various policies.

Constraints Analysis (Land Use Chapter I-23)

Most proposed development (both residential & commercial) takes into account the environmental constraints delineated in this section during the due diligence process to ascertain the feasibility of a project. It is important to encourage developers to design projects which include as many environmental attributes as possible. A number of local jurisdictions, throughout the state, have begun to include some form of constraints analysis in their environmental assessment procedures as part of a more intensive initial study. Some of these jurisdictions have also developed thresholds for guiding the planning staff in their determinations regarding the decision to provide a Negative Declaration, Mitigated Negative Declaration, Focused EIR, or a full EIR.

The City of Novato could encourage project proponents to provide an extensive constraints analysis which in many cases could provide the evidence needed to make the finding "that a project will not have a significant effect on the environment and does not require the preparation of an environmental impact report". For purposes of clarification the Legislature (Resources Code Section 21068) defined 'Significant effect on the environment' to mean " a substantial, or potentially substantial, adverse change in the environment". Most of the cases testing the actions of local jurisdictions regarding Negative Declarations (or Mitigated Negative Declarations) have been decided on the basis of the evidence (both degree and substance) available in the decision making process.

The section on Constraints Analysis might be reworded to encourage project proponents, at their option, to provide sufficient information ("evidence") which might allow the City of Novato to make a determination for a Negative Declaration. The legislature has also amended CEQA to encourage the application of a Mitigated Negative Declaration. In practice, some local jurisdictions have been able to negotiate changes in projects, during the initial study period, which have either eliminated or mitigated significant environmental impacts, and have allowed a Negative Declaration or Mitigated Negative Declaration. In some cases, this occurred even when there was local opposition to a project. Recent phone conversations with the planning staffs, where some form of "constraints analysis" or "thresholds policies" is presently in effect, indicates that they are a huge success in encouraging, environmentally sensitive projects and in reducing planning costs and time.

Additional information, including the wording in General Plans and specific local policies, has been requested, and some of this information should arrive locally this week. This information will be passed on to the planning staff immediately.

Sphere Of Influence

The revised draft General Plan does not include any reference to the Urban Service Area boundaries which are included in both the existing General Plan and the Marin Countywide Plan. The Urban Service Area is designated for some form of urbanized growth in both of those documents. The Novato General Plan stipulates, "Within the Urban Service Area the City will provide Services or facilitate their provision by existing special districts". The Marin County plan also states, "The urban service area should be viewed as an area that represents a logical, orderly expansion of urban development patterns". "It is desirable for unincorporated land within an urban service area to annex to the city at time of development."

There are only a few urban service areas presently in Novato, and much of this area is presently open space or is built out or being developed. Those remaining areas in the Urban Service Area, upon annexation, should be developed at the densities and uses in the draft General Plan. The draft EIR indicates that the discrepancies between the draft General Plan and the Countywide plan are not significant. In order to provide consistency with the prior the General Plan, the language in the "Existing Conditions Report" could be incorporated in the section on the Sphere of Influence. Additional language will need to be developed regarding conformance with the Land Use Policy Maps in the Marin Countywide Plan.

Traffic Impacts

Present review of the traffic studies has indicated certain differences between earlier traffic counts and the new data. Further analysis is occurring but the initial analysis raises concerns about the extent of actual buildout that will occur. The General Plan may need to include some reference to potential actual buildout in addition to the present figures which assume full buildout. These numbers are certainly not consistent with any assumptions inherent in a constraints analysis approach.

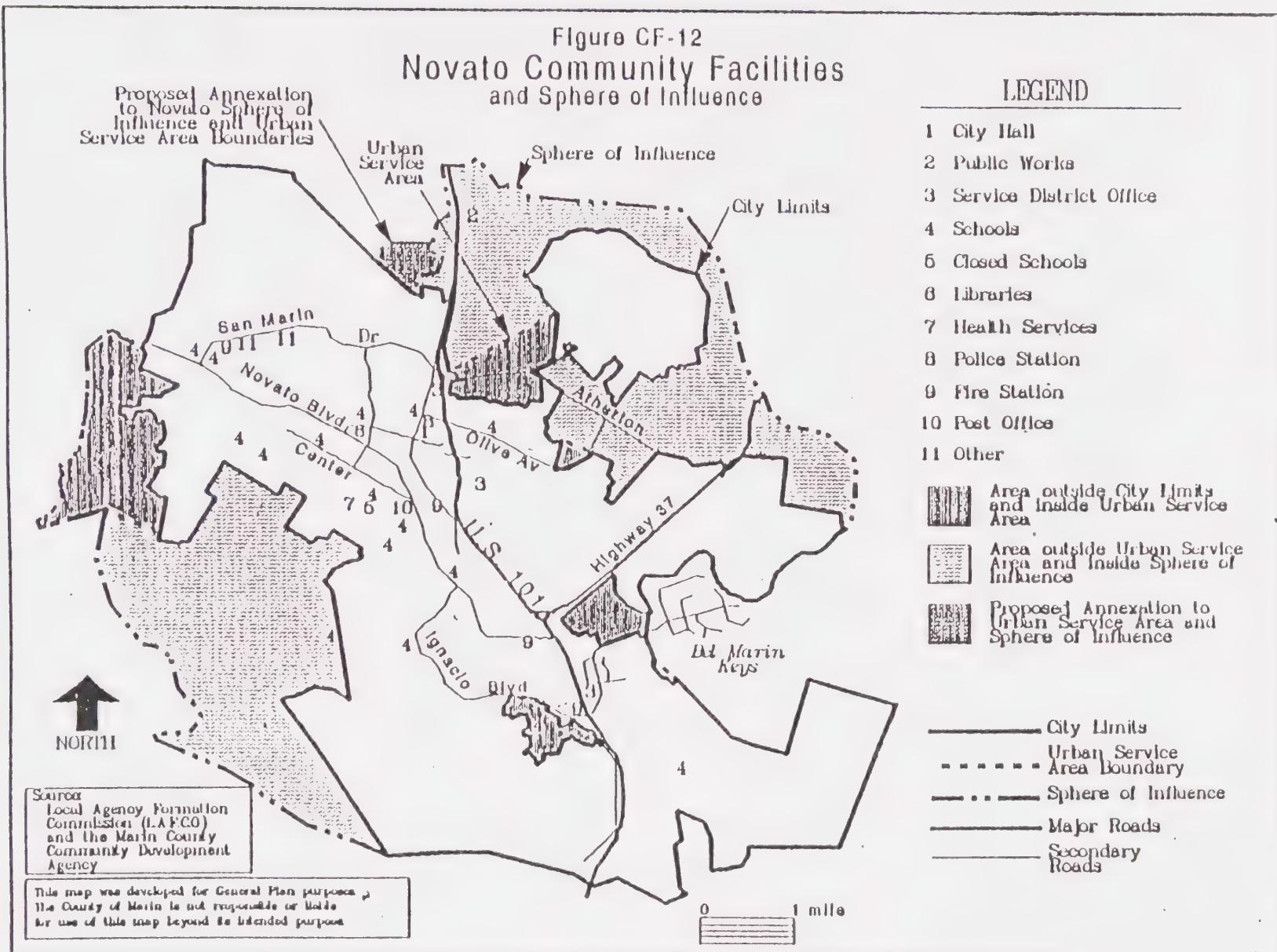
Fiscal Impacts

The Fiscal Vitality section indicates that the fiscal impacts of new development be assessed and that appropriate fees be established. It is important that individual projects be evaluated as to their specific impacts and those projects which include certain services on site receive some form of credit if impacts are minimized. Additional input will be provided to the planning staff to assist with the policies to be derived from the draft General Plan.

Hopefully, additional information and data, regarding the local policies regarding the constraints analysis, will be available for the planning commission meeting later this week.

Sincerely,


Jack Felson



Response to Letter from Jack Felsen

- I1. These suggestions are noted for the record. While the suggestions are not necessary to address any specific impact, the City certainly should consider these recommendations when finalizing the wording of the General Plan.
- I2. The comments regarding the Sphere of Influence (SOI) and Urban Service Area are not comments on the Revised Draft EIR. Inclusion of property within the City's SOI does not necessarily assume development of that property at some "urban" level.
- I3. This comment is noted for the record. As no specific question regarding the Revised Draft EIR is asked, no additional response is possible.
- I4. This comment is noted for the record. As no specific question regarding the Revised Draft EIR is asked, no additional response is possible.

Lynn and Jim Emrich
3005 Topaz Drive
Novato, Ca 94945

December 20, 1995

Planning Commissioners
Novato Community Development Department
City of Novato
901 Sherman Avenue
Novato, CA 94945

Dear Planning Commissioners:

As residents of the Bahia area, we have reviewed the Draft Novato General Plan and Draft EIR, and have identified two map designations which seem inaccurate for the Bahia Area.

Land Use Map Designation:

On the enclosed copy of EN Map 2, Bayfront Areas, located between Pages IV-16 and IV-17, (Attachment A), we have highlighted the area on this map which shows the portion of the Bahia area which is part of the historic shore of San Pablo Bay. This area should be included as part of the Bayfront Overlay Zone.

As stated on Page IV-14, "all lands within the Bayfront Overlay Zone ^{#J1} that have not been legally developed or filled should be designated as Conservation, Parkland, Open Space or Agriculture." The most appropriate designation for this area in Bahia, which includes the unimproved peninsulas surrounding the enclosed lagoon, is Conservation. This area as shown on the Novato General Plan, LU Map 1, November 1995, (Attachment B) is sandwiched to the North and East by a Conservation area and to the South by State owned Open Space. This area should be appropriately designated Conservation to conform with the adjacent undeveloped land.

These peninsulas occupy portions of the Historic Bay and now serve as wetlands areas. The lagoon is utilized by shorebirds, such as egrets and herons, and is a valuable wildlife habitat.

The General Plan strongly supports preservation of the Petaluma River watershed. (See Attachment C). The unimproved peninsulas of the proposed Bahia project, jut out towards the Petaluma River in a fashion that is uncharacteristic with adjacent undeveloped land. Developing these peninsulas would create an unsightly intrusion into the Bay Plain, which surrounds the peninsulas on three sides. To be consistent with other proposed land uses along the river and bay, including the marshland to the north, these peninsulas should be designated as Conservation.

-2-

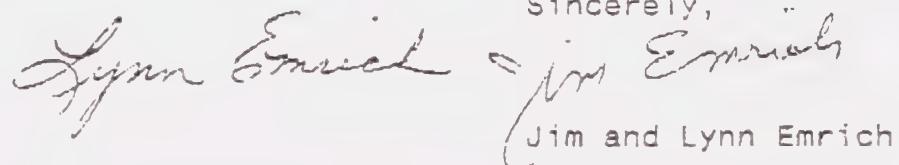
December 20, 1995

Vegetation Map:

Figure 7, Vegetation (Draft EIR, between pages 81 & 82), Attachment D, shows the undeveloped land immediately surrounding the enclosed Bahia lagoon as *Urban*. This is the same designation as the developed Bahia residential community. The designation of *Urban* is erroneous for this undeveloped land. This area is more accurately characterized as a *Saltwater and Brackish-Water Marshland*, which is described on pages 81-82 of the Draft EIR. This area of Bahia contains several areas designated by the Army Corps of Engineers as Section 404 wetland areas. Vegetation is typified by salt water plants such as cordgrass, pickleweed and salt grass. This area should be classified as a *Marshland*, (*includes areas of historic marshland not currently developed*), rather than as *Urban*.

On Page 94 of the Draft EIR, Bahia is described as an area with "unique aquatic environments." It is important for the City to continue to recognize the uniqueness of Bahia by accurately and appropriately designating the undeveloped land as *Conservation* and the vegetation as *Marshland*.

Sincerely,


Jim Emrich
Jim and Lynn Emrich

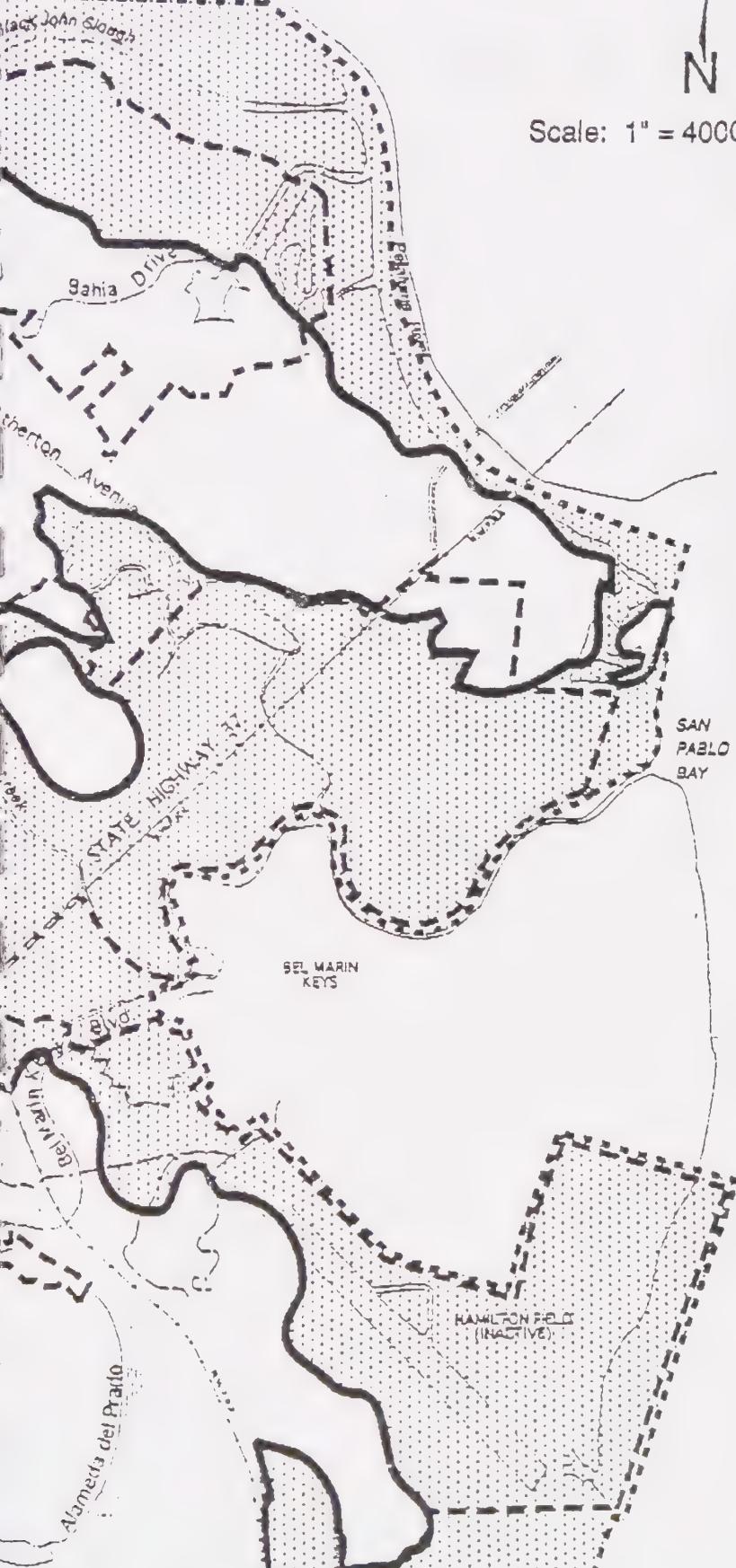
Attachments - 4

EN - MAP 2

BAYFRONT AREAS



Scale: 1" = 4000'



Historic Bay

Denotes areas that were historical marsh or open water. Certain properties have been filled to be above the historic water level. Detailed mapping of remaining wetlands (including marine estuarine, riverine, lacustrine, and palustrine wetlands) is contained in the *Atlas of National Wetlands Inventory Maps for Marin County* on file with Nova Community Development Department.

NOTE: The information presented in this map is schematic only. More detailed maps with this information are on file at the Community Development Department.

SOURCE: Nichols and Wright, 1971

City of Novato
GENERAL PLAN

ATTACHMENT



ATTACHMENT C

Petaluma River Watershed Statements from the Draft
Novato General Plan and Draft EIR

- Page IV-2, "Marshlands along the Petaluma River have been considered for nomination as a federal esturine sanctuary."
- Page IV-4, Paragraph 2, line 6, "Marshlands are very productive ecosystems which provide food, cover, nesting and roosting habitat, generate organic matter to fuel aquatic food chains, and function as natural flood control and pollution filtration systems. The bayside plains ... along the lower reaches of the Petaluma River... are subject to tidal action and support saltwater marsh and brackish-water biotic communities."
- Page IV-4, Paragraph 5, line 3, "Bay plains provide expansive views to the east and south and are important to maintain the scenic qualities along Highways 101 and 37.
- Page IV-13, EN Program 5.1: Continue to participate in the Petaluma River project to restore marshland habitat and provide public access as long as it does not adversely affect wildlife habitat.
- On Page 36, of the Draft EIR, paragraph 3, "Wetlands are provided substantive protection in the Draft General Plan, especially through the creation of the Bayfront Overlay Zone and the Wetlands Protection Overlay Zone. However, the policies and programs do not reduce the cumulative impact to a level that is less than significant. The EIR recommends designation of all lands with the Bayfront Overlay Zone that have not been legally developed or filled as Conservation, Parkland, Open Space or Agriculture. This addition plus a recommended program to provide for a buffer between wetlands and adjacent new development will reduce the cumulative effects to a level that is less than significant..."
- Page IV-15, "EN Objective 3 Preserve, protect, and enhance bayfront areas. EN Map 2: Bayfront Areas, shows the historic shore of San Pablo Bay. Areas near the Bay include wetlands, habitat areas for endangered plant and animal species, stream and lands that are at risk for damage from flooding and earthquakes. Careful regulation of development is necessary to protect environmental resources and minimize the effects of natural hazards. Many diked historic bayland areas are used for agriculture.
- Page IV-15 & IV-16, "EN Policy 11 Bayfront Overlay Zone Establish a Bayfront Overlay Zone to preserve and enhance natural and historic resources, including wildlife and aquatic habitats, tidal marshes, seasonal marshes, lagoons, wetlands, agricultural lands

ATTACHMENT D

FIGURE 7

VEGETATION



Scale: 1" = 4000'

- [Hatched Box] Marshland (includes areas of historic marshland not currently developed)
- [Solid Black Box] Grassland
- [Dotted Box] Oak Savanna/Woodland
- [Horizontal Lines Box] Urban
- [Vertical Lines Box] Agricultural
- [Checkered Box] Riparian Areas with Major Trees

SOURCE: Novato General Plan EIR (1981)

City of Novato General Plan Revis
Draft
Environmental Report

Response to Letter from Jim and Lynn Emrich

- J1. These comments are noted for the record. The peninsulas include scattered wetlands amidst legal fill (Westfall, personal communication). The City should consider these comments and may wish to re-designate the area.

BAKER & MCKENZIE

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BRUSSELS	PRAGUE
BUDAPEST	RIYADH
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GENEVA	STOCKHOLM
KIEV	VARSAW
LONDON	ZURICH
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ATTORNEYS AT LAW

**TWO EMBARCADERO CENTER
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TIJUANA
TORONTO
VALENCIA
WASHINGTON, D.C.

December 27, 1995

VIA FACSIMILE (415) 897-4354

Members of the City Council

Members of the Planning Commission

City of Novato

901 Sherman Avenue

Novato, CA 94945

**Re: Comments on November 1995
Revised Draft General Plan
and Draft Environmental Impact Report**

Dear Members of the City Council and Planning Commission:

On behalf of our client, the J. Cashew, Jr. Trust ("Cashew", as referenced in the above-entitled documents), the following are the joint comments of Carol J. Whitmire and this office on the City of Novato's ("City") November 1995 revised Draft General Plan and EIR. The Trust owns 66.6 acres of industrial zoned property. This industrial designation is consistent in the Marin Countywide Plan ("CWP") and in the 1981 Novato General Plan, and includes Assessors Parcel Nos. 125-190-17,19,43 and 56, generally lying west of Gnoss Field to Highway 101 (the "Property").

On August 17, 1995, we presented letters to the City Council commenting on the July 1995 Draft Environmental Impact Report and General Plan Revision. In summary, we noted that the July Draft General Plan and EIR placed the owners of the Property in the untenable "Catch 22" position of being in the City's Sphere of Influence ("SOI"), but designated Conservation-60, with no viable economic use, and no potential for urban services. In the interim between distribution of the July and November Draft Plans, Cashew submitted a pre-application review request to the County of Marin ("County") for a two person contractors' office and storage yard on a portion of the Property, consistent with the County's M-3 zoning with the BFC overlay. The response we received cemented the Catch-22 situation: although the use is consistent with the CWP and zoning, the County's policy is that no employees can be permitted because no urban services will be extended to properties within the City's SOI.

BAKER & MCKENZIE

Members of the City Council

Members of the Planning Commission

December 27, 1995

Page 2

Despite our comments of August 17, 1995 on the Draft General Plan and EIR as they related to the Cashew Property, no change has been made in the document to address our concerns. The November 1995 version of the Draft General Plan continues the proposed Conservation-60 designation for the Property. As a result of this land designation, together with other policies in the Draft Plan, the Property is located within the City's sphere of influence, yet will not be annexed, and urban services will not be provided. The County remains as the governing jurisdiction, yet its Industrial designation for the site has no meaningful economic realization because the County will not extend services to properties within the City's SOI. The only uses permitted under the proposed Conservation-60 designation - agricultural or one residential unit per 60 acres - are not viable for the Property due to the total lack of suitable agricultural land, and the proximity of the site to the airport and Highway 101. As stated by the County in its September 7, 1995 comments on the initial draft of the City's General Plan:

A rationale needs to be presented for establishing a designation of Conservation-60 for the privately owned parcel west of Gnoss Field. The Conservation-60 designation does not take into consideration the presence of the airport, Highway 101, or the surrounding uses. It appears that this designation would allow for at least one dwelling unit on a site which is situated between the airport runway and Highway 101. A residence on this site would be inconsistent with the policies of the Airport Land Use Plan and would present safety concerns as well as noise impacts. The developed portions of the surrounding area are commercial/industrial.

#K1

Despite staff's characterization of the issues raised by our letter, and others, as "policy issues" only which must be resolved by the City Council, the simple fact remains that, to be legally adequate, the General Plan and EIR must disclose a reasonable justification or rationale, with a real and substantial relationship to the public welfare, which supports the City's decision to change the designation of the Cashew Property from Industrial to Conservation-60. No such rationale is provided in the revised documents or the responses to our comments.

#K2

The purpose of this letter is to request that the City Council make the appropriate policy decisions to benefit both the City and the Property and correct the regulatory taking of the Cashew Trust Property by retaining the current Industrial designation of the

Members of the City Council

Members of the Planning Commission

December 27, 1995

Page 3

Property, and providing text in the General Plan that permits timely annexation and extension of urban services within the 20 year General Plan timeframe. Needless to say, these and any other policy changes will require appropriate adjustments in the DEIR.

Our more specific comments on the November Drafts of the General Plan and EIR follow. As the majority of our prior comments have not received an adequate response, our August 17th comments are incorporated in full into these comments.

Lack of Support for Conservation-60 Designation

As stated above, the November Drafts of the General Plan and EIR have not offered any substantive justification for the land use designation assigned to the Property, in spite of our comments in August. As we noted previously, the proposed change in designation cannot be considered valid unless the City can show a reasonable basis, and substantial evidence, to support its conclusions. Instead the General Plan and DEIR discriminate against the Property by including it within the Sphere of Influence, defining the Sphere, consistent with State law, as "the ultimate urban boundary of the City," and then specifically separating out this Property as Conservation-60, with no ultimate intention of annexation or provision of urban services. Further, the General Plan assumes that the Marin Countywide Plan will be revised to a consistent category. We would note, as we did in August, that while urban services do not presently serve this area, a finite area defined by surrounding dedicated open space is already developed, and in need of public sewer. The Cashew Property represents infill undeveloped land within that area. The adjacent County airport is operating in contradiction to the County's own policies, with an on-site sewage system which must be pumped on a regular basis. South of the Property, Rio Marino will be seeking sewer service to implement its development approval. West of Highway 101, sewer will be extended to the Buck Center; sewer is also needed for the Novato Motel, located west of the Property across Highway 101, served currently by sewer ponds on the east side of 101, adjacent to the Novato Storage Buildings. These ponds are in danger of overflowing with a 100-year storm. The "justification" for the Conservation-60 designation in both the July and November Drafts is "to establish a clear limit to urban development north of the City in an area that does not have sewers." That statement has no validity when applied to the Cashew Property. The Property is an infill property in an area with existing development in need of sewer service.

#K3

BAKER & MCKENZIE

Members of the City Council

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Lack of Specificity in the EIR

The EIR continues to focus on 40 specific larger undeveloped sites without specifically analyzing the impacts of development on those sites. As noted in our August 17, 1995 letter, to be adequate, the General Plan and EIR must address alternatives and impacts related to the individual parcels in sufficient detail to provide meaningful information to the public and the decisionmakers. Despite the numerous comments on this issue, the EIR documents have not been revised to correct this deficiency.

The EIR text is itself contradictory on the level of analysis provided for these parcels. In the discussion regarding the scope of the EIR, the text notes ". . . This EIR addresses these [40] sites in assessing impacts and the utility of mitigation measures. However, this analysis is not a detailed assessment of these major development sites . . ." (DEIR, pp. 2, 3). Just ten pages later, with reference to buildout projections based on the potential of these 40 sites, the DEIR states, "Buildout projections were calculated by City staff and the General Plan consultants to take into account constrained portions of properties . . ." (DEIR, p. 13). If buildout numbers were established based on constrained portions of property, but without the benefit of site specific analysis, the numbers offered are certainly called into question, especially since the numbers are specific and not given as a range or rounded off. Further, it is unclear whether buildout of the 1981 Plan took constraints into account; therefore comparison between the two Plans lacks validity.

Another apparent inconsistency shows up with respect to Table 4. The DEIR summary of significant policies cites (DEIR, p. 17 #9) "Table 4 shows the acreage within the sphere of influence for each land use designation." Of the total acreage of 22,534 acres, 55% is designated for agriculture, conservation, parkland or open space. If the SOI is intended to be the "ultimate urban boundary of the City", surely maintenance of over half of the lands in a status designed to ensure that the properties remain permanently undeveloped is inconsistent with that goal.

In sum, the text in the DEIR is internally inconsistent, inconsistent with text in the Draft Plan, and contains inaccuracies that call into question the validity of its conclusions.

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Permitted Usage of the Property

In addition to the failure to provide any adequate justification for the Conservation-60 designation, (the reference in the responses to comments to "wetlands, seismic hazard, flooding and scenic views" has absolutely no factual basis), the description of uses allowable under this designation provide for no economic return from the Property. As previously discussed, the Property, because of its proximity to Gross Field, cannot be developed even with its one permitted single family dwelling. Agriculture is not appropriate, both because of the nature of the soils and because plantings that would attract birds are contraindicated due to the proximity of the airport. Even grazing (not a viable economic use, in any event) is "discouraged" because of its potential impact on wetlands.

In addition, there are now a plethora of environmental policies that potentially affect the Property and deny any practicable use. For example, the Bayfront and Wetlands Protection Overlay Zones continue to use the Nichols/Wright Historic Tidelands mapping and the Federal Fish and Wildlife Service standards to excessively restrict any economic use of the Property. The November Draft EIR does not justify use of this excessively restrictive standard, contrary to the standard commonly applied in all other Marin jurisdictions. With respect to wetlands, the appropriate standard is that applied by the Army Corp. of Engineers, the agency with ultimate decisionmaking authority over wetland permitting. The General Plan and EIR must be modified to reflect this change.

Portions of the Constraints definition are also excessively restrictive. By incorporating Plan policies as mitigation measures, the discussion of environmental impacts become self-fulfilling prophecies. In particular, the use of the U.S. Fish and Wildlife definition of wetlands and creation of the Bayfront Overlay Zone are most restrictive than in any other Marin jurisdiction.

Allowable Uses and Environmental Impacts Must be Analyzed and Disclosed in the General Plan and EIR Now, not Later

Uses permitted within the Conservation-60 designation are not adequately described, nor are the allowable uses within the Bayfront and Wetlands Protection Overlay Zones identified. LU Program 1.2 specifically states "Use the Zoning Ordinance to specify uses allowed in each zoning district consistent with LU Table 3. Not all uses listed for a particular designation will be allowed in all locations so designated. The Zoning Ordinance

BAKER & MCKENZIE

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may establish districts allowing some but not all of the uses specified, or allowing some uses as of right and others with a use permit." (Draft Gen. Plan, Redline Version, 1-18). #K11

Further, the DEIR refers to the Bayfront Overlay Zone, the Watercourse Protection Zone and the Wetlands Protection Zone. It is unclear whether these are cumulatively overlying zones, how they will be applied, and what viable uses will be retained in these areas. The lack of clear definition of these zones, and other zoning implementation (LU 1.2) represent a situation where the impacts of decisions regarding these restrictions will not be known until a future time.

This "deferral" and lack of information in the General Plan and EIR is simply inadequate. The decisions of the California courts in CEQA cases have clearly established that an EIR must not defer to the future the study of potential impacts of an action. Leaving to the Zoning Ordinance decisions about the nature of uses within a land use category is a clear violation of law. Even a program EIR must analyze each of the actions constituting the General Plan. "A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. (CEQA Guidelines, Section 15168(c)(5)). As a result of this deferral, once again the validity of the projected build out is questionable, and it is unclear whether the projected impacts and mitigations are appropriate. #K12

Novato General Plan Final Environmental Impact Report

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Moreover, the City's approach in this regard violates the basic structure of the State Planning and Zoning laws. The General Plan is the "land use constitution" and all zoning must be consistent with that "constitution". The City's reliance on the Zoning Ordinances to specify the permissible uses in the General Plan land use categories simply turns the planning hierarchy on its head. #K13

Alternative Analysis

The Alternatives Analysis remains inadequate. The EIR continues to fail to adequately address the impacts of developing the Property for industrial use. Table 34 (DEIR, p. 267) apparently lumps the Property in a category euphemistically entitled "Other Major Development Sites and Infill". (Note that this designation supports our earlier statement that this Property is indeed infill.) This gives the Council no information to deal with this site, or the area West of Gnoss Field, specifically. There are references to "the Cashew Property" in the various Alternatives, but only vague generalizations as, ". . . where more development would occur in current unincorporated portions of the City's SOI". The #K14

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Members of the City Council

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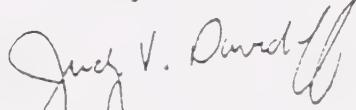
Page 7

other significant statement about the Property is that "[t]here would be potentially more loss of wetlands (as they are defined in the Draft General Plan) from development under the existing General Plan." This acknowledgment of the self-fulfilling prophecy of the General Plan's policies, together with the arithmetic recognition that greater impacts necessarily occur when more development is permitted, constitute the defense for the redesignation of the Property. This is simply not sufficient.

In summary, the City still must make substantial changes in the EIR and General Plan documents to comply with the requirements of CEQA and the State Planning and Zoning laws. As our letters of August 17, 1995 are incorporated into this response, all additional issues raised in those letters also require response.

We look forward to your response.

Sincerely,


Judy V. Davidoff

JVD:jl

enc.

cc: Paul Bickner, Senior Planner ✓
Jeff Walters, Esq., City Attorney
Helene Wright, Esq.
George Dirkes, Esq.
Carol Whitmire

Response to Letter from Judy V. Davidoff (Baker & McKenzie)

- K1. See Response D4 to this same question.
- K2. It is not the responsibility of the EIR to justify the City's proposed land use designation of an area. The EIR is responsible for assessing the environmental impacts that would result from development allowed by this land use designation. While the City should certainly consider the comments and request for justification, it is not the role of the EIR to provide this justification.
- K3. The EIR preparers had nothing to do with including the property within the City's SOI nor designating the property for Conservation. These are General Plan issues and not EIR issues.
- K4. This opinion is noted for the record. The Revised Draft EIR presents a substantial discussion of alternatives. It does not address alternative land uses for each of the 40 major sites as it is not an EIR on each of these sites.
- K5. The buildout projections used in the Revised Draft EIR were developed by City staff and presented to the EIR preparers for use in the Revised Draft EIR. The same method of calculating buildout was used for the Revised Draft General Plan and the existing General Plan.
- K6. This is a question regarding the goals of the City as expressed in the Revised Draft General Plan. It is not an EIR issue and no additional response is possible.
- K7. This opinion is noted for the record. We disagree. The Revised Draft EIR is consistent. The commentor's comments concern the fact that the commentor does not approve of the City's proposed land use designation for the site. These comments should be considered by the City, but they are not EIR issues.
- K8. Residences are not prohibited in this area; see Response D4 to this same issue. The other comments regarding site constraints are noted for the record.
- K9. The Revised Draft EIR uses the same definition of wetlands as used in the Revised Draft General Plan. The Revised Draft EIR states that this definition is more inclusive than the definition used by the Army Corps of Engineers. However, the City chose to include this more inclusive definition. Given the importance of all wetlands, regardless of whether they meet the specific criteria currently set forth by the Army Corps, the EIR preparers had no reason to use a less protective definition of wetlands than the definition chosen by the City.
- K10. These comments are noted for the record. As they are not questions of the Revised Draft EIR, no additional response is possible.
- K11. Allowable uses and environmental impacts are described at the General Plan and EIR program level. A site that has a protected watercourse and/or wetlands within the Bayfront Overlay Zone will be subject to the various restrictions and conditions for each of these zones.
- K12. This opinion is noted for the record. The Revised Draft EIR assesses potential impacts at the cumulative level. We disagree that an EIR on development possible under a new General Plan on hundreds of sites covering thousands of acres must analyze each "action" (i.e., land use designation and restrictions on development).

- K13. This is an opinion regarding the Revised Draft General Plan. As it does not contain a question regarding the Revised Draft EIR, no response is necessary.
- K14. The site in question is specifically addressed in the discussion of Alternative 3 on pages 273-275 of the Revised Draft EIR. That analysis describes the effects that could be expected if the site were developed with non-residential development. Again, the identification of wetlands is consistent with the City's proposed definition of wetlands.
- K15. This opinion is noted for the record. We do not believe changes are required in the Revised Draft EIR based on comments made by this commentor.

101

Copied to Council, Rod,
 Vi, ~~Paul B.~~, Mark W.
 12/27/95

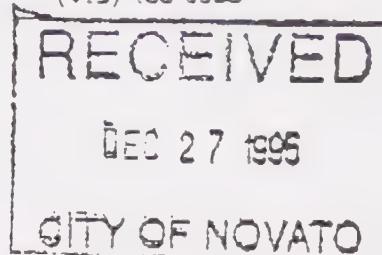
Comments on Draft General Plan

Land use planning and public policy consultant

Post Office Box 319, Woodacre, California 94973
 (415) 488-0955 FAX (415) 488-1354

December 28, 1995

Members of the City Council
 Members of the Planning Commission
 City of Novato
 901 Sherman Avenue
 Novato, CA 94945



RE: COMMENTS ON THE NOVEMBER DRAFTS
 GENERAL PLAN AND EIR

Dear Members of the City Council and Planning Commission

This letter is being written on behalf of the Leveroni family regarding property in the Bel Marin Keys area described in the Draft General Plan as Site #22, 164 acres.

We have submitted a number of letters regarding this property throughout the City's general plan process -- to staff, the Steering Committee, the Planning Commission and the City Council. To date, our comments remain unanswered. Even in the November Matrix -- Response to Public Input on Public Hearing Draft General Plan - 1995, our issues have been ignored.

This entire +160 acre property, comprised of two legal parcels, remains designated in the November Draft General Plan Conservation 60, within the City's Sphere of Influence; with no possibility of extension of public services (which are available at our property line); unable to develop in the County (with a zoning of ARP 2-10 units/ac), because of County policies regarding development in the SOI without extension of urban services; and precluded from ultimate annexation to the City by the text of the 1995 Draft General Plan. In fact, policies in the Environment Chapter of the Plan suggest that even the current marginal agricultural use (grazing) is questionable. Both the Bayfront Overlay Zone and the Wetlands Protection Overlay Zone (EN Policies 10, 11, and 12 and Programs 10.1, 10.2, and 10.3) preclude any development on this land; EN Policy 15 and Program 15.1 suggest that cattle grazing may adversely affect wetlands and sensitive wildlife habitats which have priority protection. Assuming that policy implementers will not be able to enforce these programs with sufficient vehemence, the DEIR further recommends a "Additional Mitigation Measure" to insure that the Leveroni property is singled out:

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 Re: Leveroni
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To ensure no loss of wetlands in the area between Bel Marin Keys industrial area and Highway 37, the recommended mitigation is to designate this land that is within the Bayfront Overlay Zone as Conservation. This land use designation shall apply to all lands within the Bayfront Overlay Zone that have not already been developed or legally filled above the historic bay elevation. (DEIR, p. 114)

Our question remains: What economic use of this +160 acre property is possible, consistent with the Novato General Plan?

- Even the presumably permitted 3 single family dwellings are infeasible...
 - ...because urban services will not be extended....
 - ...because wetlands and bayfront policies preclude grading....
 - ...because no buyers exist for a residential lot adjacent to a sewer treatment plant....
- Even ag-related services, which require a structure, are prohibited...
 - ...because of lack of urban services....
 - ...because the County will not permit employees....
 - ...because of wetlands protection policies....
- Even the 40 head of cattle periodically grazing the site are discouraged...
 - ...because of potential adverse impacts on the wetlands and sensitive wildlife....

We are discouraged too. The Draft General Plan essentially condemns this property to open space, perhaps a public benefit, but at the total expense of the property owner who is barred any reasonable use of the land.

With a clear eye, we suggest looking at the possibilities for this property. This land is unique, lying between the developed industrial park and the developed residential portions of Bel Marin Keys. It has intermodal access, with the rail line, two highway frontages, and access from Bel Marin Keys Blvd. It is an important future local connection to Novato Blvd. Absent the City's excessive wetlands protection policies, this property could be key industrial real estate.

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Planning Commission
Re: Leveroni
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This property is comprised of two separate legal parcels, a 28 acre rectangular parcel with frontage on Bel Marin Keys Blvd, and the 136 acre residual stretching from that to Hwy 37. The 28 acre parcel has received legal fill for a number of years so that it no longer can be considered historic diked baylands. The 136 acre parcel has no rare or endangered plants, and would reasonably support industrial or residential development avoiding wetlands if the normal Corps of Engineers definition for wetlands was used. With the present designation and policies, both parcels are undevelopable, unsaleable, and unusable.

With a creative approach, however, both the City's and the property owners' goals could be achieved. First, the 28 acre parcel should be separated from the 136 acre residual, and designated for industrial use compatible with the adjacent industrial park. The property owners will then have reasonable economic potential for that piece.

Then, the 136 acre residual should NOT be included in the City's SOI, unless the City truly intends to permit urban development and extension of urban services in the 20 year Plan timeframe. If not, the County's ARP 2-10 acres/unit zoning should be recognized, and the City's General Plan should create policies to provide an economic return for open space, if that is what is desired. Programs such as Purchase of Development Rights, Transfer of Development Rights (to Bel Marin Keys Unit 5?), and Biotic Mitigation Banking all offer compensation to a property owner for non-development of land.

In summary, we request:

- That the General Plan and EIR recognize the separate nature of the two parcels with separate land use designations:
 - Industrial for the 28 acres;
 - Ag (2-10 acres/ unit, per County) for the 136 acres;
- That the General Plan provide policy direction to extend urban services at a minimum to the 28 acre parcel.
- That the 136 acre parcel be left out of the Sphere of Influence if urban services will not be extended.
- That the General Plan include policies for Purchase of Development Rights, Transfer of Development Rights and Biotic Mitigation Banking programs.

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Planning Commission
Re: Leveroni
Page 4

Thank you for your attention to our concerns. We remain available for further discussion at your convenience.

Sincerely,



Carol J. Whitmire

Response to Letter from Carol Whitmire

Most of this letter includes comments on the Revised Draft General Plan and the land use designation given to a particular site. These comments are noted for the record, but no response is required in this EIR.

- L1. Any changes in land use designation must be done by the City when finalizing the General Plan. It is not the role of the EIR to amend land use designations.

To Planning Commissioners
 Novato Community Development Department
 City of Novato
 Novato, Ca. 94945

From: Carol and Jesse Bedi
 3004 Topaz Drive
 Novato, Ca. 94945

Regarding: Novato General Plan

Date: December 28, 1995

After reviewing the revised Draft of the Novato General Plan we feel it has not adequately addressed the land use for the Bahia area. The plan allows for 514 potential residences on the site. Many of these homes would have to be built on the peninsulas necessitating the extension of Topaz Drive. It is no longer feasible to build houses in this area. With Topaz Drive as the only road through Bahia leading to Bahia Drive as the only exit out of Bahia, adding more homes would make the area extremely dangerous in case of an emergency. One narrow emergency access road may be built but no other roads out of the neighborhood are feasible because of environmental restrictions. Even the possibility of the road from Lindsay Court to Atherton Avenue seems to have vanished now that Mr. Nave has stated (as of Nov. 1995) that he has no plans to develop his property. #M1

Extending Topaz Drive without adding any additional internal roadways will put all through traffic on Topaz Drive creating a giant cul de sac at the end of Topaz Drive. This may cause insurance companies to give our area a second look. They have canceled many policies in fire hazard areas, such as Mill Valley. The EIR regarding the Novato General Plan indicates the current area of Bahia as a fire hazard (Figure 19). However, the peninsulas are not so designated. Thus adding homes there should not affect their ability to get insurance but may very well disallow us from obtaining it.

Please reconsider and designate the peninsula area of Bahia as conservation or rural residential. Thank you.

Sincerely,

Carol Bedi
 Carol Bedi

Jesse Bedi
 Jesse Bedi

Response to Letter from Carol and Jesse Bedi

- M1. This comment is noted for the record. It is true that allowing development with only one access potentially creates a safety hazard. The City should certainly consider this when reviewing any future development applications for the area. The Revised Draft General Plan contains policies (SF Policies 15-17) requiring that new development be assessed to reduce the risk from fire. Assessment of each site in Novato for its potential fire hazard is beyond the scope of this EIR. However, the City should consider this request for re-designation of the site.

700 Larkspur Landing Circle
Suite 255
Larkspur, CA 94939
415 925-2920
FAX 415 925-1706

BLACK POINT PARTNERSHIP L.P.

January 3, 1996

Planning Commission
City of Novato
900 Sherman Avenue
Novato, CA 94945

Subject: Novato General Plan Revision;
comments pertaining to Renaissance site.

Dear Commissioners:

Black Point Partnership, L.P., owner of the 238.5 acre Renaissance site, has reviewed the Revised Draft General Plan and DEIR. Pursuant to the Judgment entered by Judge Gerald E. Ragan on October 23, 1995, and the Stipulation for Entry of Judgment signed by City of Novato and Black Point Partnership, L.P., attached thereto, the provisions of the new General Plan do not apply to our development of the site. Nevertheless, we would like to submit these comments because we believe portions of the Revised Draft General Plan and DEIR are inappropriate and in certain instances factually inaccurate.

Many of our comments on the July 1995 Public Hearing Draft of the Novato General Plan, submitted in our letter dated August 8, 1995, have been satisfied. We have additional comments which are summarized below.

A. Revised Draft General Plan

1. Page 1-8, LU Table 2: Major Development Sites

#N1

Parcel #21 references the maximum development potential for the Renaissance Faire site. This table notes that this property contains 231 acres and that the potential dwelling units would be 85. These figures are incorrect. The site contains 238.5 acres and the dwelling units allowed under its current General Plan designation is 90. Please correct this table and other text sections of the Revised Draft General Plan and DEIR to reflect the appropriate figures.

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2. Page IV-15, EN Policy 11, Bayfront Overlay Zone (Environment). #N1

While we philosophically support reasonable bayfront protection, any policy must be able to take into account the conditions on each parcel, including whether the property actually fronts the Bay. Given the distance of our property from the Bay and the intervening land uses, (our property is not bayfront), as well as potential inconsistencies with the approved land use, such an overlay is not appropriate for our site.

3. Page IV-19, EN-Map 3, Scenic Resources (Environment).

The map identifies the entire site as a scenic resource. The valleys which are not visible from off-site, and the old, scarred quarry are not acknowledged. As noted in our comments on the previous Draft General Plan, we oppose the mapping of the entire site and request that the quarry and valleys be removed from this category. Designation of the quarry and valleys would be inconsistent with the definition of a scenic resource as presented on page IV-4 of the Draft General Plan and pages 171-172 of the Revised DEIR.

4. Appendix A, page 9, first full paragraph.

As described in our previous comments, the Appendix notes that the diked historic baylands portion of the Renaissance site is presently used for agriculture. This is misleading and incorrect. While hay farming is conducted on the site, it is not the primary use of the land. The low lying area is used for Renaissance Faire parking, storage, auto repair and other uses by the Living History Center. Further, Figure 7 of the Revised DEIR (follows page 81) identifies the lowland areas of the site as "grassland", as opposed to the contiguous Flood Control District land, which is identified as "agriculture". Therefore, a contradiction exists in the document which should be corrected.

B. Revised DEIR

1. Page 45e, (Table 6-Impact and Mitigation Summary). #N2

Recommended mitigation for impact 4.3C (wetlands) includes adding a program to EN Policy 12 which states that development in the Bayfront Overlay Zone shall provide a 100 foot buffer between wetlands and development, wherever feasible. Wetland setbacks should be based on wetland quality, resource value, proximity to other valued wetlands and the nature of the proposed development. As described in A.2 above, we

oppose the application of this policy for our site. Furthermore, we oppose #N2 the strict application of a 100 foot buffer from a wetland without regard for site specific variables.

2. Page 45f (Table 6-Impact and Mitigation Summary).

We strongly support the creation of wildlife travel corridors. #N3

Recommended mitigation for impact 4.3E (barriers for wildlife movement) recommends adding EN program 27.3 for the purpose of protecting ridge lines which serve as wildlife travel corridors. Program 27.3 recommends across the board that development within 100 vertical feet of a ridge line within a scenic area, as well as development protruding above a designated ridge line, be prohibited. This restriction is arbitrary and does not take into account site specific wildlife movements. Although our project proposes no development on two of the three ridge lines located on the property, we oppose this program as it is currently drafted.

Any such restriction should be flexible enough to take into account overall protection of wildlife corridors and views throughout the area while still allowing reasonable economic use of the property.

3. Page 245, EN Objective 5 and EN Program 20.3.

This objective and program address the protection of agricultural use of agricultural lands. While we support preservation of valuable agricultural lands, an overly broad approach to the protection of lands in agricultural uses is not practical or reasonable. Protection of agricultural land use should be based on a site-specific basis and on criteria such as 1) crop productivity, 2) soil conditions, 3) value and/or the abundance of the agricultural crop that is lost, (e.g., loss of oat hay farming would not be impacting in that this crop is prominent in the North Bay region) and 4) ability for economic return. Specific criterion such as these should be included in the City's policies and programs for agricultural use. #N4

4. Impact 4.3-B, page 109

We suggest deleting the last sentence of the first paragraph because 1) it #N5 does not seem appropriate or fair to single out one development as an example 2) the statement is not factually accurate and 3) an example is not needed for the sake of clarity.

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January 3, 1996
Page 4

5. Impact 4.8-B, page 177

The first sentence of paragraph #1 (Highway 37) should acknowledge that residential (e.g., Black Point, Green Point) and commercial development (e.g., Harbor Blvd -- liquor distributor, mini storage, lumber yard, etc.) exists and is visible from Highway 37 | #N6

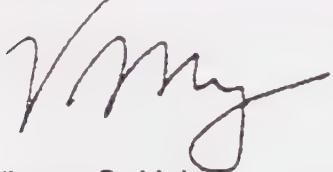
6. Page 244

The description of the current status of the Project is inaccurate. Furthermore, we do not see any purpose under CEQA for discussing legal details beyond the General Plan Amendment, zoning and map approval as reflected in the October 1995 approval. | #N7

We look forward to your response and since the comment period on the revised General Plan is still open, we intend to submit additional comments concerning that document in a subsequent letter.

Thank you for the opportunity to submit these comments.

Sincerely,



Vincent D. Mulroy
Black Point Partnership

vdm/eg

Response to Letter from Vincent D. Mulroy (Black Point Partnership L. P.)

- N1. These are comments on the Revised Draft General Plan. No response to these comments is required in this Final EIR. The comments are noted for the record.
- N2. The commentor's opinion is noted for the record. We concur that ideally the buffer should correspond to the site-specific situation. If the City decides to include the mitigation measure recommended on page 114 of the Revised Draft EIR, it may wish to change the language to state that a buffer commensurate with the habitat value of the wetland and adjacent upland will be required.
- N3. The opinion is noted for the record. Please note that the recommended program preserving ridgelines is intended as mitigation for visual impacts as well as wildlife impacts. It remains the opinion of the EIR preparers that this program is necessary to mitigate visual impacts (see pages 174-177) as well as wildlife impacts.
- N4. This comment is directed towards the Revised Draft General Plan and not the Revised Draft EIR. The comment is noted for the record. The policy and program as currently drafted adequately mitigate impacts on agriculture. However, the City should consider these comments when finalizing the General Plan.
- N5. The comment is noted for the record. The sentence is not necessary for the discussion of the impact. Thus, if the City wishes, this sentence could be deleted from the Final EIR. In either case, the conclusions and the recommendations of the EIR will remain the same.
- N6. This statement is true and is hereby incorporated. It does not change the conclusions or recommendations of the EIR.
- N7. Based on review by City staff, the description of the project was accurate at the time of EIR preparation. The comment is noted for the record. It does not change the conclusions or recommendations of the EIR.

CALL 6-99 881 4-41 88
FROM : McClarin & Sasicu

PHONE NO. : 415 693 6987

Jan. 04 1996 11:02AM P1

Judith A. McClarin
99 Blanca Drive
Novato, CA 94947

1/4/96

Mark Westfall, Planning Director
Community Development Department
901 Sherman Avenue
Novato, CA 94945

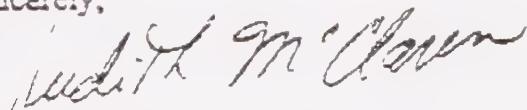
Dear Mark,

I have an additional question or clarification of my comments at the Planning Commission meeting last night, 1/3/96. On page 128, section 4.5 Transportation and Circulation, B. Potential Impacts, the criteria to determine a significant impact is listed. The Levels of Service (LOS) selected to test the impact of the Draft General Plan buildout on local traffic is exactly the same as the LOS selected in the Draft General Plan to start controlling the traffic impact. In other words the test to determine the impacts of a policy or program uses the very same criteria as the policy and programs, therefore there is no independent evaluation of the traffic impacts from the Draft General Plan. I would like to see an independent set of criteria used to evaluate the traffic impacts of development.

#01

It is my understanding that the EIR is to be an independent, objective evaluation of the Draft General Plan and the use of identical criteria to set policy and evaluate the policy is not scientifically acceptable and may not meet the legal requirements of an EIR. Please have the city attorney comment on this issue for me.

Sincerely,



Judith A. McClarin, Ph.D.
Planning Commission, Vice Chair

Response to Letter from Judith A. McClarlin, Ph.D.

The traffic engineers have responded to this letter in the following manner.

- O1. The main criterion used to evaluate traffic impacts is a Level of Service D with a maximum delay of 40.0 seconds of delay per vehicle at signalized intersections. This standard will be used to assess traffic impacts at study intersections in the Revised Draft EIR. Thus, on page 267 of the Revised Draft EIR, Criterion 1b should be eliminated. Only the LOS D criterion was used to assess impacts. This type of criterion is the nationally recognized methodology used to evaluate traffic congestion. This level of service standard is typical for signalized intersections for the majority of public agencies in the State of California. This level of service is used for the majority of EIR assessments and policy standards for general plans. While certain communities use a LOS C criterion, these communities tend to be located outside of major urban areas.

The traffic analyses for the General Plan and the Revised Draft EIR were prepared by the same traffic engineers. It would be strange for them to use different methodologies for one document and a different set for the other. The aim was to have an independent expert provide the data necessary to ensure that City traffic would meet specified levels of service.

The Revised Draft EIR describes six intersections that would operate at LOS D after mitigation. If a LOS C criterion were used, the six intersections predicted to operate at LOS D would require additional mitigation measures to operate at LOS C. These improvements would generally require roadway widening and/or loss of parking to provide additional travel lanes.

Comments and Responses to Comments Made at Public Hearings

The following pages are responses to the comments as recorded by the City in the Minutes of the five Public Hearings.

F-1 1995 NOVATO DRAFT GENERAL PLAN AND
DRAFT ENVIRONMENTAL IMPACT REPORT (MW)

- (a) STAFF REPORT (Verbal)
- (b) COMMISSION DISCUSSION - EIR
- (c) COMMISSION DISCUSSION - GENERAL PLAN
- (d) PUBLIC COMMENT - EIR
- (e) PUBLIC COMMENT - GENERAL PLAN
- (f) REVIEW SCHEDULE OF FUTURE MEETINGS

Main topic for tonight: Planning Commission Deliberation of the Draft GP and the Draft EIR

Planner Westfall gave a brief presentation and update, stating that the Council workshops were still continuing.

After discussion, the Commission asked for information from the workshops to be submitted to the commission at least two day's prior to Commission action meetings.

Staff agreed, stating that they had drafted a summary list of Council issues for the Commission to review, to be delivered tomorrow; tapes and preliminary minutes could also be provided tomorrow.

Process discussion ensued.

Planning of future General Plan special meetings was discussed: it was agreed that these would occur December 14, 18 and 21, with January 3 for action on the draft EIR.

Planner Westfall suggested addressing topics for the General Plan and the EIR in the order of the General Plan Table of Contents.

The Commission agreed to take testimony on both each night.

Planner Westfall stated that the deadline for written responses on the draft EIR was 5PM on January 2.

It was agreed that the meeting on December 14 would cover the Introduction and Land Use and Transportation Chapters of the EIR.

Planner Westfall stated that the materials needed for the December 14 meeting would be available tomorrow night after 5PM.

It was confirmed that the focus of the upcoming meetings' discussion would be the quality of the draft EIR and comments and questions regarding the draft EIR.

Commissioner Peters moved, seconded by Commissioner Conklin, to follow the procedural steps originally recommended by staff and to hold public hearings during December on both the draft EIR and draft General Plan. Motion passed 4/2, Commissioners Nevins and McClarin dissenting.

Dissenting views felt the procedure on the General Plan seemed backwards and it appeared that the Planning Commission deliberation was not really required in the process. It was felt that this way of proceeding would provide too little public testimony. It was pointed out that the Planning Commission's Preferred Plan Alternative was altered by the last Council, but now the Council (and the Commission) had several new members.

Planner Westfall commented that the reduced-development alternative was fairly similar to what the prior Commission had recommended as their Preferred Plan Alternative.

Discussion then focused on which members of staff and consultants would be required and when. It was decided that the Assistant City Attorney would be welcomed on January 3, that the fiscal and economic consultant would be welcomed on December 14, and that if the City Engineer, traffic consultant or others were needed, the Commission would apprise them at a later date.

December 18 would be set aside for the economic and fiscal analysis, housing, human service and public facilities.

December 21 would cover the environment, safety and noise, community identity and Appendix A.

Public hearing on the draft EIR was opened. Seeing no response, the Chair continued this hearing to December 14.

The Chair then opened the public hearing on the draft General Plan.

Al Bianchi asked procedural questions, referred to his letter submitted on December 5 regarding the Marin IJ property and also submitted a letter regarding 7 and 9 Zanco Way; he requested that the Zanco Way property continue with the duplex designation it now holds, and asked that the properties be designated legal duplexes, not non-conforming.

Ken and Rose Marie Grayson spoke regarding their property at 727 Cherry Street; they wanted the density to remain the same as when purchased one year ago.

Danny Fred represented San Marin Business Park and Bahia; he referred to Mr. Linthicum's letter previously submitted.

The Chair urged the speakers to view the discussion that would be held on December 14 regarding land use.

DRAFT

E-1 1995 NOVATO DRAFT GENERAL PLAN AND
DRAFT ENVIRONMENTAL IMPACT REPORT (MW)

- (a) STAFF REPORT (Verbal)
- (b) COMMISSION DISCUSSION - EIR
- (c) COMMISSION DISCUSSION - GENERAL PLAN
- (d) PUBLIC COMMENT - EIR
- (e) PUBLIC COMMENT - GENERAL PLAN
- (f) REVIEW SCHEDULE OF FUTURE MEETINGS

Main topics for tonight: Introduction, Land Use and Transportation Chapters of the General Plan; any topic in the Environmental Impact Report.

Planner Westfall stated that the City was urging the public to submit their comments as soon as possible.

The Chair described the structure of tonight's meeting.

The scheduling of future meetings was discussed. The next special meetings will be December 18 and 21. Tentative dates decided upon for next year include: January 2 or 3, January 18, January 25, February 5 (Final Approval of FEIR) and February 8 (Final Action on Draft General Plan).

The Commission agreed that they did want to have much discussion on the General Plan until they heard public testimony.

Planner Bickner stated that City Council could remand issues in the Plan back to the Planning Commission after final action on February 8, but that was not likely.

Process questions ensued.

It was agreed that shorter meetings, even though it meant there may be more meetings, was desired.

A question was raised regarding comments heard before this revision.

Planner Westfall responded that the process defined prior comments as already having been addressed and therefore, if anyone felt otherwise, they would have to submit their comments again. (NOTE: December 18 at 5PM is the final deadline for written comments.)

Chair Lugin said he would welcome both the EIR and General Plan public hearings to come before Commission discussion on any given night.

Substantive comments and questions regarding the EIR followed.

The following were recommended to address further in the EIR:

- . To add the "Fiscal Analysis" to the "List of Documents" in the EIR | #P1
- . To generate a memo of a few pages summarizing the EIR changes; hopefully, next week | #P2
- . To have more verbiage about areas outside of the Sphere of Influence | #P3
- . Use the most current figures possible, especially regarding population | #P4
- . "Goals," now on page 10, should be moved up to page 9, before "Geographic" | #P5
- . On page 13, reference was made to 22 land use categories; there were recommendations to condense these, when the Commission was assured that buildout numbers would factor the same | #P6
- . On page 14, #5: omit the word "sensitive" | #P7
- . On page 22, in Objection 4, also include "linking habitats" | #P8
- . On page 23, in Objective 6, also include non-native trees; then, also, delete the related note on page 24 | #P9

The following comments/questions referred to the Land Use section.

Updating of maps was discussed.

When asked what analysis of growth management, constraints analysis or land use categories had been incorporated into the EIR, Planner Westfall stated that no analyses of these were made, since the EIR only addresses physical or environmental impacts.

- . Recommendation to omit the last two sentences of Impact 4.17-G on page 254 (superfluous) | #P10
- . On page 238 under "Sphere of Influence," add commas to the first sentence and change "uses" to "Use." | #P11
- . Referring to the top of page 244, it was pointed out that the Black Point settlement agreement was still in legal limbo | #P12
- . On page 244, move the Buck Center to "City" | #P13
- . Page 244, under "Bel Marin Keys Unit Five": include mention of the January 2, 1996 filing | #P14
- . On page 248, Impact 4.17-C, define "improvements" | #P15
- . On page 248, SF Program 35.2: Question regarding federal and county agencies found that ultralights are not regulated by federal agencies. | #P16
- . On page 249 under Impact 4.17-D, add "Gail Wilhelm's additional concerns" that development may be too intense, and physical conflicts between uses may arise | #P17

- . On page 250, CI Policy 22: don't use the word "encourage" | #P18
- . On page 251, add a CI Policy: "To acquire attractive architecture and landscape design," an obvious but necessary Community Goal per Planner Westfall. | #P19
- . On page 283, shouldn't the top #1 ranking be Alternative 7? | #P20

General discussion ensued.

- . On page 244, confusion regarding planning area versus sphere of influence: when will the discussion on the differences occur, and whether any parcel changes could potentially affect the EIR content; does the Commission have the authority to make parcel changes.

Planner Westfall referred the Commission to Table 33 on page 267, showing that a lot of changes could be made without affecting the EIR.

The Commission agreed to use the redline version of the General Plan in their upcoming discussions.

Planner Westfall stated that the fiscal and economic consultant would be available at approximately 9 PM for the next Planning Commission meeting, December 21.

It was recommended to indicate on any further notices to the public that previous comments made on the EIR may need to be reported again if anyone felt that they had not been adequately addressed.

Upon request, Planner Bickner stated that he would contact Mr. Weise and have him contact Ken Bell regarding the unsuitability of the alignment of the walk/bike path due to the wall being built on the levy.

F. NEW ITEMS: (None)

G. APPROVAL OF MINUTES: (None)

H. NON-AGENDA DISCUSSION: (No Actions)

H-1 Staff
H-2 Commission

Commissioner Peters, moved, seconded by Commissioner Nevins, to adjourn. Motion was unanimous.

The meeting was adjourned at 9:30 PM.

**E-1 1995 NOVATO DRAFT GENERAL PLAN AND
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) (MW)**

- (a) STAFF REPORT (Verbal)
- (b) COMMISSION DISCUSSION - EIR
- (c) COMMISSION DISCUSSION - GENERAL PLAN
- (d) PUBLIC COMMENT - EIR
- (e) PUBLIC COMMENT - GENERAL PLAN
- (f) REVIEW SCHEDULE OF FUTURE MEETINGS

Main topics for tonight are any topic in the Environmental Impact Report, and the following Chapters of the General Plan: Housing, Economic Development & Fiscal Vitality, Human Services, and Public Facilities and Services.

The Chair explained that the Land Use and Transportation sections were also to be discussed as a continuation from the last meeting.

Planner Westfall referred to the staff report submitted on December 15 by Leonard Charles on changes made to the DEIR.

The Commission confirmed that action would be taken on the DEIR on January 3, not January 2.

The Chair reopened the public hearing on the DEIR.

Carol Williams and Kim Hansen were present. Ms. Williams spoke, representing the Marin County Community Development Agency, reviewing their concerns and referencing Ms. Hansen's letter of December 15 submitted prior; she stated that they would submit an additional letter regarding the EIR as soon as possible.

Danny Fred represented Bahia and stated that he was present to answer questions and that noted that a newer map showed the Bahia development proposal outside the airport noise contours.

Ed Schulze, 1 Tenaya Lane, stressed the importance of dog parks and wildlife corridors.

The Chair continued the EIR public hearing to December 21, 1995.

E-1 1995 NOVATO DRAFT GENERAL PLAN AND
DRAFT ENVIRONMENTAL IMPACT REPORT (MW)

- (a) STAFF REPORT (Verbal)
- (b) COMMISSION DISCUSSION - EIR
- (c) COMMISSION DISCUSSION - GENERAL PLAN
- (d) PUBLIC COMMENT - EIR
- (e) PUBLIC COMMENT - GENERAL PLAN
- (f) REVIEW SCHEDULE OF FUTURE MEETINGS

Main topics for tonight are any topic in the Environmental Impact Report, and the following Chapters of the General Plan: Environment, Safety and Noise, Community Identity and Appendix A - Novato Neighborhoods.

Planner Westfall stated that the last Council workshop on the General Plan would be held on January 8; he stated that major unexpected suggestions for change were not likely.

The Chair reopened the public hearing on the EIR.

George Amaroli, of 11 Rebecca Way, spoke of three concerns that he believed were not addressed adequately in the DEIR: air pollution, noise and transportation, and gave suggestions for improvement.

The Chair continued the DEIR public hearing to January 3, 1996.

The Chair reopened the public hearing on the General Plan. Seeing no response, he continued this public hearing to January 3, 1996 as well.

There were no process questions. Substantive comments and questions regarding the EIR ensued.

General EIR Comments

The Commission asked that the EIR not refer to particular projects or sites, such as on pages 65 and 109.

It was suggested that the EIR should provide condensed overall evaluations of issues.

Planner Westfall pointed out that the EIRs purpose was only to point out facts and possible mitigations; to identify impacts in various areas, but not to make decisions.

The Commission asked how the sections titled "Addition Mitigation Measures Suggested" should be addressed.

Planner Westfall said that that would occur as part of a project EIR, that would be brought forth to the Commission with a mitigation plan; the key was whether a mitigation measure was feasible in a given situation while being economically viable. He wondered whether the EIR shouldn't comment on a mitigation's feasibility; if not feasible, should it even be mentioned?

For example, on page 114, the Chair felt the while #2 was excessive, it was feasible; however #1 was not feasible.

The following were recommended to be addressed further in the EIR under "Geology and Soils":

- . On page 51, the last sentence in the "Bay Muds and Marshlands" section was discussed and disputed.
- . Page 56, end of first paragraph under "Impact 4.1-A," referred to Figure 4, an ABAG map; #Q1 further explanation and qualifications were recommended to closer replicate the original map.
- . Page 57, toward the end of the third paragraph: After discussion, it was suggested that the #Q2 effects of the Loma Prieta earthquake would best reflect what the EIR needed as reference.
- . Page 58, second paragraph: delete "is beneficial" and indicate that it would likely be #Q3 impassible.

Planner Bickner explained that Highway 101 was not a Category 10, and that that would be #Q4 corrected.

- . After discussion, it was felt that when referring to policies and programs of the EIR (for #Q5 example, on Page 59, first paragraph), phrases using the word "mitigating" should be rephrased so as not to be confusing or problematic; the question was raised if this point wouldn't actually be part of a project EIR.
- . For clarity, on page 59 under Impact 4.1-B, the first paragraph's third sentence should be #Q6 removed, and add to the second paragraph the words, ", a potentially significant impact."
- . On page 61, SF Program 3.1, the point was made that a 15 percent slope was quite shallow; #Q7 hadn't the Commission changed this to 20 percent?
- . On page 63, EN Policy 36, questions were raised regarding prevention, since Flood Control #Q8 doesn't adequately address the issue of whether new development would impact and contribute to the protection system, whether additional mitigation measures would be required, and how they would be enforced.

- . On Page 63, in EN Objective 10, and Impact 4.1-E's "Additional Mitigation Measures Suggested" on page 64, how would impacts such as sedimentation be earmarked as "due to new development"? #Q9

The following was recommended to be addressed further in the EIR under "Hydrology and Storm Drainage":

- . Pages 72 and 73, starting with the second paragraph under "Additional Mitigation Measures Suggested," it should be clarified who is responsible, the City or the Flood Control District, since the City cannot dictate to another agency; non-maintenance, not improper infrastructure, results in most flooding problems. #Q10

Discussion occurred regarding the fact that the General Plan and EIR addresses only future development; however, couldn't there be some way to cover existing development's problems created by new development elsewhere. It was concluded that policies should be implemented for new development to pay for all improvements necessary to increase flood control on other properties it affects at a calculated percentage: #Q11

- . Page 75, PF Program 1.5 was noted in this regard.

Planner Westfall concurred that new development should address potential flood hazards and that new development should participate in area-wide flood control solutions.

- . Page 76, EN Program 3, "Wildlife Habitat" was questioned: isn't this inconsistent with other programs for streams? #Q12

The following was recommended to be addressed further in the EIR under "Vegetation and Wildlife":

- . On pages 83 and 84, the question was raised as to whether there were means to establish quantified relative habitat values; it was pointed out that not all diked historic baylands were the same. #Q13
- . At the top of page 107, there was a comment made that it did not seem that the Constraints Analysis was not being treated the way the Commission had wanted it addressed; there was a suggestion that the EIR respond to this issue with wording such as: "There is a City mandate to do Constraints Analysis before project review." #Q14
- . On page 108, second paragraph , regarding Special Status Species, further explanation of the term was sought: is this the same as Figure 8, "Sensitive Species Occurrences"? Serpentine outcroppings in soils, being a potential resource for rare spiders and flora, should also be protected. Page ____ #Q15
- . Page 110, paragraph before "Additional Mitigation Measures Suggested," refers to the Draft Trees and Shrubs Ordinance; this must be moved forward on the timeline for implementation. #Q16

- . On page 112, EN Policy 9, the question was raised whether the EIR would be adequate if the City elected to use, for instance, the Army Corps of Engineer's definition instead. (Planner Westfall answered yes.) #Q17
- . On page 114, #2 of "Additional Mitigation Measures Suggested" was felt to be excessive. #Q18
- . On page 116, EN Objective 4 should be broadened to include the entire community of Novato, including urban areas. #Q19

Scheduling of Future Meetings

Planner Westfall stated that the next meeting on January 3, would include taking action to direct staff to take all comments and produce a Final EIR (unless they deemed this EIR an insufficient draft). He stated that since the Final EIR must be published by January 24, he or Planner Bickner should be apprised by telephone if any Commissioners felt that they would be providing future discussion that would need a more significant response than those questions/comments raised so far, such as the adequacy of the alternative study or a recommended new alternative.

The Chair asked staff to contact the absent Commissioners regarding this issue. He felt the key question was: have certain changes been studied in the alternatives.

F. NEW ITEMS:

G. APPROVAL OF MINUTES: (None)

H. NON-AGENDA DISCUSSION: (No Actions)

H-1 Staff
H-2 Commission

Commissioner Peters moved, seconded by Commissioner Cleek, to adjourn.

The meeting was adjourned at 9:53 PM.

MINUTES OF THE PLANNING COMMISSION MEETING
CITY OF NOVATO, STATE OF CALIFORNIA

Council Chambers
Community House

SPECIAL MEETING

DRAFT
January 3, 1996
7:30 PM

The meeting was called to order at 7:30 PM by Chair Lugin with the Pledge of Allegiance.

Members Present: Ned Lugin, Chair
A. Gerald Peters
Annette Conklin
Wayne Capers
Kevin Cleek
Judith A. McClarin, Vice Chair

Members Absent: Terri Nevins

Staff Present: Mark Westfall, City Planner
Paul Bickner, Sr. Planner
Patricia Howell, Recording Secretary
Leonard Charles, Environmental GP Consultant

A. APPROVAL OF FINAL AGENDA

Commissioner Peters moved, seconded by Commissioner McClarin, to approve the agenda. Motion passed 5/0.

B. NON-AGENDA NEW BUSINESS: (CITIZENS) (None)

C. STATUS REPORTS: (COMMISSIONERS / STAFF) (None)

C-1 GENERAL PLAN REVISION (See Below)

C-2 HAMILTON RE-USE

A Multi-Agency Board meeting is scheduled for January 16, 1996.

C-3 DOWNTOWN SPECIFIC PLAN

No meetings since last Commission meeting; next is scheduled for January 11, 1996.

C-4 ECONOMIC ADVISORY COMMITTEE
Novato General Plan Final Environmental Impact Report

No meetings since last Commission meeting.

C-5 OTHER

Planner Westfall reported on the status of the January 8, 1996 packet.

Commissioner Cleek again requested a response from the City Attorney as to the legal context regarding the proposed Zoning Ordinance Amendments to be heard January 8, 1996.

D. CONSENT CALENDAR: (No Items)

E. CONTINUED ITEMS:

E-1 1995 NOVATO DRAFT GENERAL PLAN AND DRAFT ENVIRONMENTAL IMPACT REPORT (MW)

- (a) STAFF REPORT (Verbal)
- (b) COMMISSION DISCUSSION - EIR
- (c) COMMISSION DISCUSSION - GENERAL PLAN
- (d) PUBLIC COMMENT - EIR
- (e) PUBLIC COMMENT - GENERAL PLAN
- (f) REVIEW SCHEDULE OF FUTURE MEETINGS

Main topics for tonight are any topic in the Draft Environmental Impact Report, and action on same.

Planner Westfall further explained the staff report and the process to be followed tonight; he pointed out that the City Council workshops had elicited no comments regarding the EIR.

Process questions were addressed.

The Chair reopened the public hearing on the EIR.

Bill Jeong of PG&E referred to his previous letters, and voiced his concerns regarding the verbiage #R1 and conclusions that seemed to be drawn in the EIR about EMF hazards prior to conclusive evidence supporting these.

Consultant Charles responded that the documentation from PG&E had been incorporated as an Appendix to the DEIR and that until the new data comes in, the wording of "adopt" had been changed to "consider."

Brian Clear, San Francisco, stated his concerns; he felt the use in reports of the catch phrase of "this is a policy issue" was wrong and requested that 1995 mid-census numbers be used to update the DEIR. #R2

Bob Lang, Garner-Pacheco Association, had concerns with the noise element, and recommended that the Commission read Appendix A from the State of California General Plan Guidelines with regard to preparing a noise element. #R3

George Amaroli, of 11 Rebecca Way, spoke of his concerns regarding the EMF issue and recommended adopting the State's school guidelines for setbacks from power lines for residences as well. #R4

The Chair closed the DEIR public hearing.

The Chair reopened the public hearing on the General Plan. Seeing no response, he continued this public hearing to January 18, 1996.

There were no process questions. Substantive comments and questions regarding the EIR ensued. All remaining topics of the DEIR were addressed; those having comments are listed below.

When asked, Planner Westfall explained the differences between "policies" and "programs."

Comments were made regarding Sphere of Influence: on page 8, a definition is needed that describes it as ultimately urban; conflicting statements appeared on page 10, last sentence of Goal (3) versus page 14, last sentence of (1). #R5

Questions were raised regarding pages 12 and 13: what was the basis for the numbers in Tables 2 & 3? #R6

On page 128, after "Criteria Used to Determine Significance" add the words "of Impact;" disagreement was voiced regarding criteria #1; that this criteria would be a policy issue, not an objective standard. #R7

On page 135, mentioned that "TR Policy x" was in conflict with "TR Policy 11." #R8

On page 143, it appeared that LOS F on Highway 101 was being discounted. #R9

On page 175, how will "EN Policy 27" be carried out with "EN Program 27.1" being worded as "Consider"? #R10

On page 177 and 178, with regard to Impact 4.8-B: How will entry points be addressed in a constraints analysis mentioned at the bottom of page 178? #R11

On page 178, last sentence of effect #5, delete the words "very limited." #R12

- On page 180 under "Additional Mitigation Measures Suggested" for 4.8-D, aren't soundwalls inconsistent with the noise element? – perhaps delete last third of this paragraph, since EN Program 27.2, page 175, would cover all Scenic Resources. #R13
- On pages 228 and 229, EN Policy 47 and 49, concern was voiced over the effects of greenways due to human intrusion in wildlife habitat. #R14
- On page 231 under Impact 4.16-A, second paragraph: Reword, since measures won't reduce, only reduce rate of growth. #R15
- On pages 231 and 233, concern was voiced regarding the language regarding EMFs, and what basis was used for describing as a "risk" and "harmful." #R16
- On pages 232, EN Policy 28 and EN Policy 31: Delete the word "Consider," replace with "Continue to evaluate...". #R17
- On page 234, question was raised regarding SF Policy 33: Why should this be restated when this is a requirement already? #R18
- Under "Energy" topic, concern was raised over no discussion of alternative energy such as solar. #R19
- On page 262, under Significant Cumulative Impact #1, should be noted as "at peak hours": include this verbiage wherever a LOS problem is referenced. #R20
- On page 274, #3, specify whether we are referring to all wetlands or not; also, this point conflicts with page 275, where loss of wetlands are not considered significant in Countywide Plan referred to in paragraph before "Summary." #R21
- On pages 277 and 278, Alternative 5 has no discussion of land use. #R22
- On page 277, Alternative 5: How was the 0.2-acre size derived. #R23
- On page 277, Alternative 5: The assumption that grasslands are less important than woodlands was questioned. #R24
- Concern voiced that traffic analysis of LOS on Highway 101 and Route 37 does not clearly show sources of traffic increase. #R25
- On page 279, #6 needs to address the possibility of increased density contributing to an increase in the spread of fire. #R26

* * * *

Commissioner Peters moved, seconded by Commissioner Conklin, to accept the revised Draft EIR, dated November 1995, as an adequate draft, and direct staff and the consultant to prepare a Final EIR. Motion passed 6/0.

Further discussion raised the question of when would be most appropriate to ask the City Attorney to attend. It was decided to accept public testimony on the General Plan through the February 5, 1996 meeting date.

F. NEW ITEMS: (None)

G. APPROVAL OF MINUTES: (None)

H. NON-AGENDA DISCUSSION: (No Actions)

H-1 Staff
H-2 Commission

Commissioner Peters moved, seconded by Commissioner Capers, to adjourn.

The meeting was adjourned at 10:25 PM.

Public Hearing Held On December 7, 1995

No comments on the Revised Draft EIR were made at this hearing.

Public Hearing Held On December 14, 1995

- P1. The fiscal report is listed on page 4 of the Revised Draft EIR.
- P2. A memo was prepared and submitted to the Community Development Department.
- P3. Areas outside the proposed Sphere of Influence are within the jurisdiction of the County. The Revised Draft General Plan does not guide development in those areas.
- P4. The Revised Draft EIR was prepared at a specific point in time. It is a "snapshot" in time. Unless new population figures or other demographic data would substantially affect the conclusions or recommendations of the EIR, it is unnecessary to continually amend the EIR as new data are published.
- P5. This opinion is noted for the record. It does not affect the conclusions of the EIR.
- P6. This is a General Plan issue. No EIR response is necessary.
- P7. This opinion is noted for the record. This is a General Plan issue. No EIR response is necessary.
- P8. This is a General Plan issue. No EIR response is necessary.
- P9. This is a General Plan issue. No EIR response is necessary.
- P10. This opinion is noted for the record. We see no reason to omit these data, but the Revised Draft EIR can certainly be so modified without affecting its conclusions or recommendations.
- P11. The commas are hereby added and the word Use is substituted for uses.
- P12. This is true.
- P13. The change is hereby made as requested.
- P14. The comment is noted. Again, it must be remembered that the EIR was prepared at a moment in time and is not intended to keep track of the most current status of specific development applications.
- P15. Improvements refers to residences or other buildings that might be constructed.
- P16. This is a General Plan issue. No EIR response is necessary.
- P17. It is possible that the density of development may be perceived as too intense by some people. This comment is noted for the record.
- P18. This is a General Plan issue. No EIR response is necessary.

- P19. This is a General Plan issue. No EIR response is necessary.
- P20. The alternatives are incorrectly ranked. This was a typographic error. See the end of this report ("Summary of Corrections") for the correct ranking.

Public Hearing Held On December 18, 1995

No comments were made on the Revised Draft EIR at this hearing.

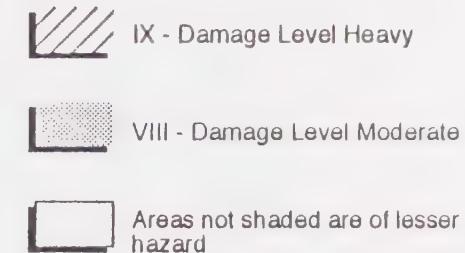
Public Hearing Held On December 21, 1995

- Q1. Seismically hazardous areas are depicted in a schematic fashion on Figure 4; the damage that can be expected is described in Table 8 on page 53 of the Revised Draft EIR.
- Q2. Comment is noted for the record.
- Q3. This opinion is noted for the record. The provision of a second access is beneficial. While it may be that it will become impassable during a seismic event, this is not known. It is certainly better to have two accesses to the area rather than one, as is currently the case.
- Q4. Figure 4 incorrectly shows Highway 101 as Level X. This is an error based on incorrect mapping presented by ABAG. Figure 4 has been corrected and is included on the following page.
- Q5. Comment is noted for the record.
- Q6. Comment is noted for the record. It would be a potentially significant impact if development were to occur in areas subject to tsunami
- Q7. This is a General Plan issue. No EIR response is necessary.
- Q8. This is a General Plan issue. No EIR response is necessary.
- Q9. Substantial erosion from a site can be determined on a visual basis by knowledgeable staff who are familiar with the area.
- Q10. The City is responsible for storm drains within the City as well as development within the floodplain. Thus, the City would be responsible for City storm drains (a

FIGURE 4

EARTHQUAKE HAZARD
NORTH HAYWARD EARTHQUAKE
MAGNITUDE 7.1

Scale: 1" = 4000'



NOTE: This map is schematic and should not be used to determine hazard at any particular location. See the detailed maps on file with the Novato Community Development Department.

SOURCE: *On Shaky Ground - City Maps*
City of Novato (ABAG, 1995)

City of Novato General Plan Revision
Draft
Environmental Report

----- City Limit Line
..... Sphere Of Influence
Revised & Recirculated
November, 1995
Corrected January, 1996

part of Point 1 and a part of Point 6 on page 72 of the Revised Draft EIR); it would be responsible for Point 2-5, 7, and a part of Point 8.

- Q11. This is a General Plan issue. No EIR response is necessary.
- Q12. This is a General Plan issue. No EIR response is necessary.
- Q13. There are methods of quantifying habitat value. However, a qualitative approach is warranted for a Program EIR given the broad range of habitat types in Novato.
- Q14. The comment is noted for the record. The EIR preparers have no problem with including the requested sentence; it will not alter the conclusions or recommendations of the EIR.
- Q15. Special Status Species are defined on page 103. These are the species mapped on Figure 8. The Revised Draft EIR does recommend inclusion of serpentine outcroppings in the Constraints Analysis (see bottom of page 108).
- Q16. This is a General Plan issue. No EIR response is necessary.
- Q17. Comment noted for the record.
- Q18. This opinion is noted for the record.
- Q19. This is a General Plan issue. No EIR response is necessary.

Public Hearing Held On January 3, 1996

- R1. The comment is noted for the record. The health hazard posed by EMFs is currently a matter of substantial study and controversy. This is borne out by a number of other commentors' statements at this Public Hearing. It is well beyond the role of this EIR to conduct the basic research into EMFs or to conclusively determine which research is correct. The Revised Draft General Plan policies and programs related to EMFs recognize the potential health hazard and require monitoring of data on EMFs. Given the uncertainty regarding EMFs, these policies and programs appear prudent and to adequately mitigate the potential impact.
- R2. The comments are noted for the record. The Revised Draft EIR was prepared prior to 1995 mid-census data being published. It would skew the report to use these data at this point. The new data will not change the conclusions or recommendations of the EIR.
- R3. This comment is noted for the record. As it does not include a question on the Revised Draft EIR, no response is required.
- R4. The School Facilities Planning Division has established the following limits for locating school sites near high voltage power transmission lines (from *School Site Selection and Approval Guide*, California State Department of Education, 1989):
 - 1. 100 feet from edge of easement for 100-110 kv line
 - 2. 150 feet from easement edge for 220-230 kv line
 - 3. 250 feet from easement edge for 345 kv line.

See our previous Response R1 on the controversy surrounding EMFs. Again, it cannot be definitively stated what the hazard is. The policies and programs of the Revised Draft General Plan provide for consideration of EMF hazards when approving new development. Requiring setbacks as suggested above would further decrease the possibility that people would be exposed to dangerous levels of EMFs. However, we do not have the evidence necessary to require such a mitigation. Nevertheless, the City may wish to require such setbacks to ensure the safety of its citizens.

- R5. The Sphere of Influence defines the probable ultimate physical boundaries and service area for the City. This area need not be developed to some "urban" density. Agricultural and open space lands can be included within a City's Sphere of Influence.
- R6. The data were developed by City staff and the General Plan consultants using the City's land use database as well as staff knowledge of major development sites.
- R7. This comment is noted for the record. The traffic engineers responsible for the analysis have responded that the use of LOS D with a maximum delay of 40.0 seconds for signalized intersections is nationally used for evaluating traffic congestion. This LOS is typical for signalized intersections in most urbanized jurisdictions in California.
- R8. TR Policy 11 refers to extending streets through new development whereas the referenced TR Policy x refers to possibly limiting through traffic through existing neighborhoods. From an environmental perspective, if one policy had to be chosen, then the recommended TR Policy x mitigates more substantial impacts than TR Policy 11.
- R9. The comment is noted for the record. The Revised Draft EIR describes the impact on Highway 101 as a significant adverse impact that cannot be avoided.
- R10. The Policy (EN Policy 27) requires City protection of visual values. The program is one means of realizing this protection. The policy as well as other policies and programs cited on pages 175-176 of the Revised Draft EIR reduce the impact to a level that is less than significant. It is assumed that future City Councils will develop a ridgeline protection ordinance as recommended in EN Program 27.1. However, even if they do not, the Policy as well as other policies and programs cited provide protection for the aesthetic resources in question. Nevertheless, the City always has the option of strengthening this or other programs that use the word "consider" by using words such as "adopt" or "require."
- R11. The requirement provides the means for City review of development at these entryways. The Constraints Analysis requires that a project be reviewed relative to policies guiding development near scenic resources (EN Objective 6 and associated policies). While the requirement for preparation of a Constraints Analysis does not guarantee preservation of important scenic resources, it provides the framework to allow the City to require such preservation.
- R12. This change is hereby incorporated. This change does not change the conclusions or recommendations of the EIR.

- R13. The requirement that Caltrans include a visual analysis simply allows the City to see what both the acoustic and visual effects of a soundwall will be. This will allow more informed discussion of the merits of soundwall projects.
- R14. A number of the Revised Draft General Plan policies address potential trail/recreational impacts on wildlife. For example, see EN Policy 12, EN Policy 16, and EN Policy 18. These policies were added or expanded to the original Draft General Plan in response to concerns expressed by a number of environmental groups regarding potential recreational impacts on wildlife and plants.
- R15. These amenities will reduce the use of fuel below what would be used if they were not present. That is, more fuel will be used if there are not bikeways allowing people safe, efficient bike access to shopping, parks, etc. More fuel will be used if there is an inefficient circulation system. More fuel will be used if there is no or minimal public transit. It was not intended to imply that these factors will reduce fuel consumption below current usage levels. Rather, these amenities will reduce future consumption below the level that would occur if they were not present.
- R16. The criterion is that people not be exposed to harmful EMFs. It does not define what "harmful" is. The State of California requires new schools to be setback from high voltage transmission lines (see *School Site Selection and Approval Guide*, California State Department of Education, 1989, pp. 4-5). The State recognizes that there is not a scientific consensus regarding EMF health safety, but requires school districts to take a conservative approach. Similarly, the EIR preparers have not determined that there is a scientific consensus but believe that a conservative approach is warranted.
- R17. Comment is noted, and the change is hereby incorporated.
- R18. The policy could be eliminated. Its inclusion or removal will not alter the conclusions or recommendations of the EIR.
- R19. The preparers of this EIR are fully supportive of development and use of alternative energy. However, it does not appear our role to insist that the City develop or require such alternative energy uses. The EIR (on pages 231-233) assesses whether development under the Revised Draft Plan will result in wasteful use of energy. It was concluded that the policies and programs of the Revised Draft Plan would result in an increased use of energy, but not a wasteful use. It is waste that is the important criterion, as obviously almost any new project will generate additional energy demand.
- R20. This comment is noted for the record. This change can certainly be made throughout the Revised Draft EIR. It will not change the conclusions or recommendations of the EIR.
- R21. The Countywide Plan uses a different definition of wetlands than is used in the Revised Draft Novato General Plan. Given the City's proposed definition, much of the area west of the airport contains wetlands. If the Army Corps of Engineers' definition of wetlands is used, there is less wetland acreage.
- R22. Less land would be developed under this alternative since areas with environmental resources would be afforded greater protection. However, there would be no overall decrease in the amount of development when compared to the development

allowed under the Revised Draft General Plan (see Table 32 on page 267). This is because density would be transferred to less sensitive portions of sites.

- R23. A different size of wetland could certainly be used. There is no scientifically-determined size of wetland that can be described as "valuable."
- R24. Grasslands are not less important than woodlands. However, on most sites there are more grasslands than woodlands. No value judgment was intended.
- R25. Congestion on Highway 101 will occur whatever Novato does. Increased development outside the SOI and/or the County will result in Highway 101 operating at LOS F.
- R26. This is true, however, the difference is not substantial.

Summary of Corrections to the Revised Draft EIR

A number of our responses to comments incorporate changes in language in the Revised Draft EIR. As noted, most of these changes do not alter the conclusions or recommendations of the Revised Draft EIR. However, in a number of cases we have recommended that additional mitigation's be included to mitigate impacts that were not assessed or incorrectly assessed. These changes are listed below.

1. Figure 4 has been replaced to eliminate Highway 101 being designated Hazard Zone X.
2. The ranking of alternatives on pages 44 and 283 should read:
 - a. Alternative 7
 - b. Alternatives 4, 5, and 6
 - c. Alternative 2
 - d. Draft General Plan
 - e. Alternative 3
 - f. Alternative 1
3. A mitigation shall be added to page 108 that states, *The Bayfront Overlay Zone will be established as part of the adoption of the General Plan, and all policies related to this Zone (EN Policies 11-17) are effective with Plan adoption..*
4. The Revised Draft EIR is amended on page 116 to state *EN Policy 18 shall be restated to say "Protect biological resources that are necessary to maintain a diversity of animal species."*
5. EN Map 3 of the Draft General Plan shall be amended to include the northwest and southwest entryways along Highway 101 as defined "scenic areas" thus affording these properties the protections and scrutiny required of all sites shown on EN Map 3 (that is, subject to policies and programs on pages 175-176 of the Revised Draft EIR).
6. Add a program to EN Policy 32 that states *The City shall monitor new development to ensure that projections made in the Draft General Plan are not exceeded. If there is substantial increase in development over projections, then the City shall investigate additional transportation, land use, and air-quality-beneficial measures to improve air quality.*
7. Add a program under EN Policy 34 that states, *If fireplaces or woodburning stoves/heaters are installed in new development, these fireplaces, stoves, and/or heaters shall meet the most current EPA standards regarding particulate emissions.*
8. Add a program be added to EN Policy 34 that states, *Review all new industrial development for potential air quality impacts on sensitive receptors. Require adequate buffer zones between industrial development and sensitive receptors to ensure public health and to prevent odor-based nuisance.*

9. The mitigation measure recommended on page 114 of the Revised Draft EIR (recommended measure No. 2) should be reworded to state, *All new development within the Bayfront Overlay Zone shall provide a buffer between wetlands and the development. The buffer shall be of sufficient width to protect wetland habitat values. This buffer shall be at least 100 feet in width unless a lesser width is recommended by the California department of Fish and Game.*
10. On page 267 of the Revised Draft EIR, Criterion 1b should be eliminated. Only the LOS D criterion was used to assess impacts.

Errata

These additional changes are hereby made.

1. It is noted that the Revised Draft EIR on page 88 refers to data about wetlands as being in Appendix B. This should state that these data are on file with the Novato Community Development Department as a separate document.
2. The Revised Draft EIR refers to various specific sites in discussing potential impacts. This reference to sites is necessary. However, there is no need to refer to specific development applications on those sites. As such, any reference to a project application should be eliminated from the Revised Draft EIR.
3. Table 32 on page 267 of the Revised Draft EIR has two typographic errors. The residential buildout for Alternative 3 should be changed from 5,730 units to 5,690 units. The non-residential buildout for Alternative 7 should be changed to 2,160,000 square feet. These changes make Table 32 consistent with Tables 33 and 34.

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